

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND
Office of Zoning and Administrative Hearings
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
FOREST GLEN VENTURE, LLC
Applicant

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Neither in Support of nor in
Opposition to the Application

Peter Andresen

In Opposition to the Application

Before: Françoise M. Carrier, Hearing Examiner

Zoning Application No. G-828

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Application No. G-828, filed on August 24, 2004 by Applicant Forest Glen Venture, LLC, requests reclassification from the R-90 Zone (single-family residential) to the PD-15 Zone (Planned Development) of 31.78821 acres of land in the 13th Election District.¹ The Applicant was a contract purchaser when the application was submitted, but has since become the property owner.

The application was initially reviewed by Technical Staff of the Maryland-National Capital Park and Planning Commission ("MNCPPC") who, in a report dated December 10, 2004, recommended *approval*.² The Montgomery County Planning Board ("Planning Board") considered the application on December 16, 2004 and unanimously recommended *approval*. A public hearing was conducted on January 5, 2005 at which testimony and evidence were presented in support of the application. One community member participated briefly in the hearing to note his opposition and request leave to file a written objection. The record was held open to accept post-hearing submissions by the Applicant and the one community member who had requested leave to submit a post-hearing letter, and closed on January 12, 2005. The record was reopened on March 1, 2005 to accept a minor, non-substantive correction to the Land Use Plan and closed again immediately.

II. FINDINGS OF FACT

For the convenience of the reader, the findings of fact are grouped by subject matter. Where there are conflicts in the evidence, these conflicts are resolved under the preponderance of the evidence test.

A. Subject Property

The subject property consists of approximately 32 acres of land in Silver Spring, made up of Parcel 1, containing 27.2 acres located north of Linden Lane, adjacent to Route I-495

¹ The application initially identified the land proposed for rezoning as 31.9905 acres. The land proposed for rezoning was later revised slightly, based on the actual land transfer that took place during the pendency of the application. The final amount of land proposed for rezoning is 31.78821 acres.

² The Staff Report is liberally paraphrased and quoted in Part II of this report.

(the “Beltway”) and in close proximity to the CSX Railway, and Parcel 2, containing 4.78 acres located south of Linden Lane between its intersections with Stephen Sitter Lane and Woodstock Court. The Forest Glen Metrorail station is located less than one mile north of the property, and the Silver Spring Metrorail station is about four miles southeast of the site in downtown Silver Spring. Vehicular access to the site is available at several locations on Linden Lane.

The area comprising Parcel 1 has been designated a historic district on both the National Register of Historic Places (“National Register”) and the Montgomery County Master Plan for Historic Preservation (the “County Preservation Plan”). It is important to note that this designation extends not only to the historic buildings on the site but also to the historic setting and landscape. Moreover, the entire 32-acre site is encompassed by a historic preservation easement for the benefit of the Maryland Historic Trust, which gives the Trust approval authority over all changes to existing buildings and the architectural design of new construction.

The portion of the subject property included in the historic district contains approximately 29 buildings in a campus-like setting, 23 of which (dating from 1887 to 1927) contribute to the historic character of the site. The main buildings are arranged in a wide arch atop a bluff that overlooks a 300-foot-wide wooded ravine and streambed known as the Glen. Additional buildings are located closer to Linden Lane and on the east side of the main campus. They were once joined by lawns, gardens and covered walkways, but are now mostly connected by asphalt roadways. The total built space contains about 375,000 square feet. The historic district also has decorative elements such as historic statues and a large fountain. All but one of the buildings are vacant, and most are in an advanced state of disrepair with leaking roofs, failed steam systems, broken pipes, and collapsing walls and floors. Many of the historic buildings have a significant amount of asbestos containing materials and lead paint which, due to water and steam damage, pose hazards to individuals entering the buildings.

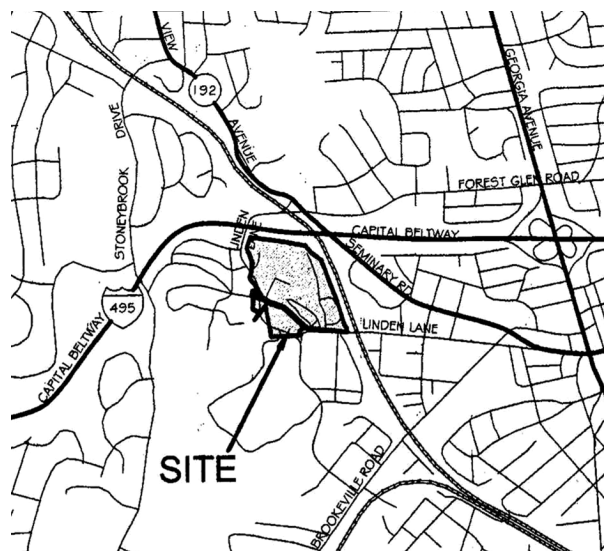
The only building that is currently occupied is the stable, which is leased by Montgomery County and houses a transitional shelter for men operated by Catholic Charities. The

building is approximately 11,000 square feet in size and accommodates 32 residents. This use is to be relocated on site in connection with the proposed development.

The subject property has striking topography that varies more than one hundred feet in elevation from the gently rolling upland hills to the steep stream valley. Approximately 13 acres of the property is forested, mostly within the Glen. Natural features of the site include a rolling lawn in front of the main building with several significant old growth trees, and the Glen, which is part of a larger forest stand extending east and west of the site. The Glen was once a place for relaxation, with historic statues, paths, stairs and secluded seating areas. Today, after years without maintenance, it is overgrown and difficult to traverse.

Parcel 2 is almost entirely vacant, with only two structures, both small, single-family dwellings. A small tract of forested land in the southwest corner of Parcel 2 is part of a much larger forest stand extending to the west, contiguous with forest in the Rock Creek stream valley corridor.

The subject property abuts the Beltway to the north, to the east a salt dome and warehouse that belong to the Walter Reed Army Medical Center Annex ("Walter Reed Annex"), to the southeast the main portion of the Walter Reed Annex, to the southwest MNCPPC parkland that connects with Rock Creek Park, and to the west the residential neighborhood of Forest Glen Park. The general shape and location of the subject property are shown on the map below (excerpted from Ex. 65(a)). Adjacent uses may be seen on the vicinity map on the next page.



The aerial photograph below provides another view of the site and vicinity.

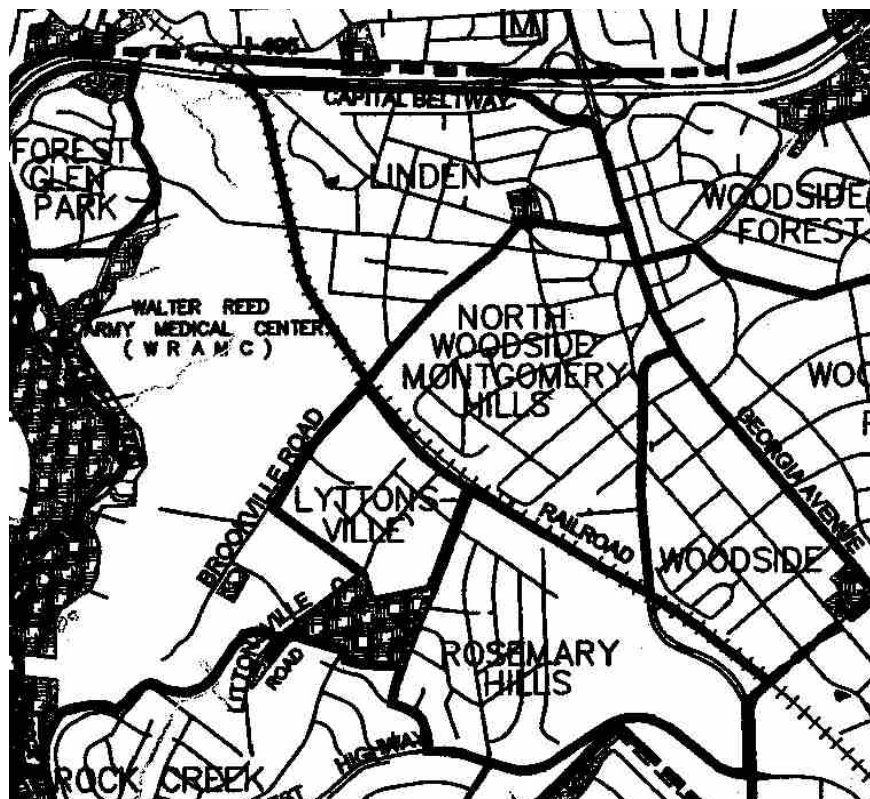
Aerial Photograph, Ex. 17



B. Surrounding Area

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development.

In the present case, Technical Staff described the surrounding area as that area identified in the *August 2000 Approved and Adopted North and West Silver Spring Master Plan* (the “Master Plan”) as the Walter Reed Army Medical Center neighborhood, which extends roughly from the Beltway on the north to the CSX rail line on the east, Brookville Road on the southeast, Rock Creek on the southwest and Forest Glen Park on the northwest. See Master Plan at 17. The Applicant’s land planners agree with this designation, as does the Hearing Examiner. The surrounding area is shown on the map below, excerpted from the Master Plan.



The surrounding area contains a mix of uses. In addition to the residential uses, which are primarily single-family, detached dwellings, there is parkland, the institutional uses of the Walter Reed Annex and some uses that are industrial in nature, like Walter Reed's salt storage facility and warehouse adjacent to the eastern boundary of the site. The surrounding area is classified primarily under the R-90 Zone.

C. Zoning and Land Use History

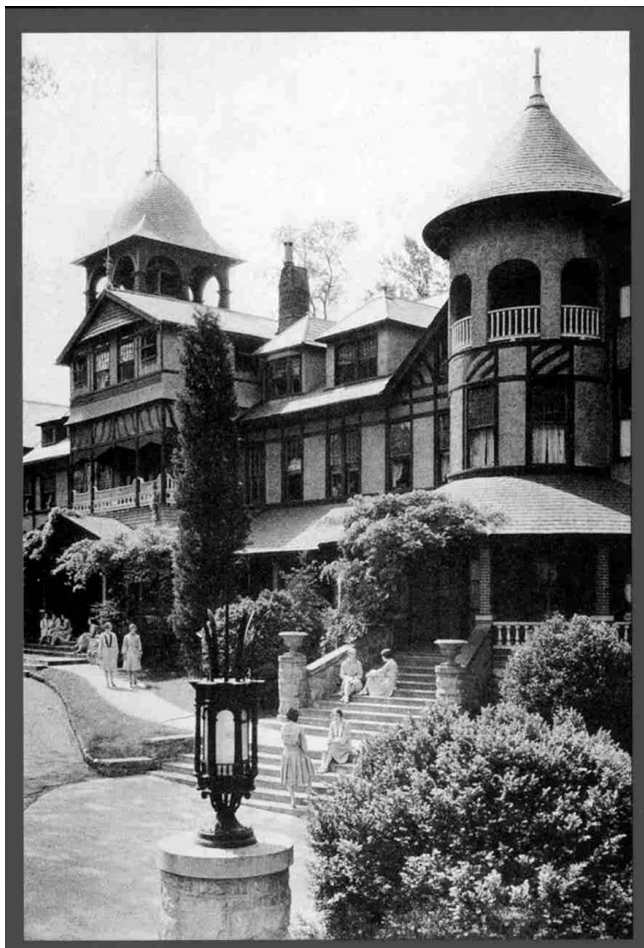
The historic portion of the subject property, once a tobacco farm, was developed in 1887 as a railroad-era resort hotel known as Ye Forest Inn. The hotel was not financially successful, and the site changed hands in 1894, becoming a girls' finishing school known as the National Park Seminary. The main historic building was built in conjunction with the hotel in 1887. The front of the building faced the Glen, with the Forest Glen train station on the far side of the ravine (the Beltway, of course, did not exist at that time). Students at the Seminary reached the site by taking the train to the Forest Glen station and then walking to the site over a footbridge through the Glen. The Linden Lane perspective was historically the rear of the site, although today it is the primary access point.

Around the turn of the century, the directors of the Seminary began making additions to the original building and adding new buildings, including a series of sorority houses with international or cultural themes. In all, the Seminary had 20 fanciful structures including a Japanese pagoda, a stone castle, an Italianate villa and a Dutch windmill. These buildings, combined with classical statuary and natural and planned landscape, made the site a remarkable assemblage. Several witnesses described the historic district as one of the most whimsical places in the Country. The photographs on the following pages provide some historical views of the property. More extensive photographs and a detailed review of the site's history can be found in a book entitled Enchanted Forest Glen, which was published by the citizens' group Save Our Seminary and is in the record as Exhibit 62.

Historical Site Photos, Excerpted from Ex. 62, Enchanted Forest Glen



**Campus View (above) with Chapel
on Left, Pagoda on Right, Looking
South towards Linden Lane**



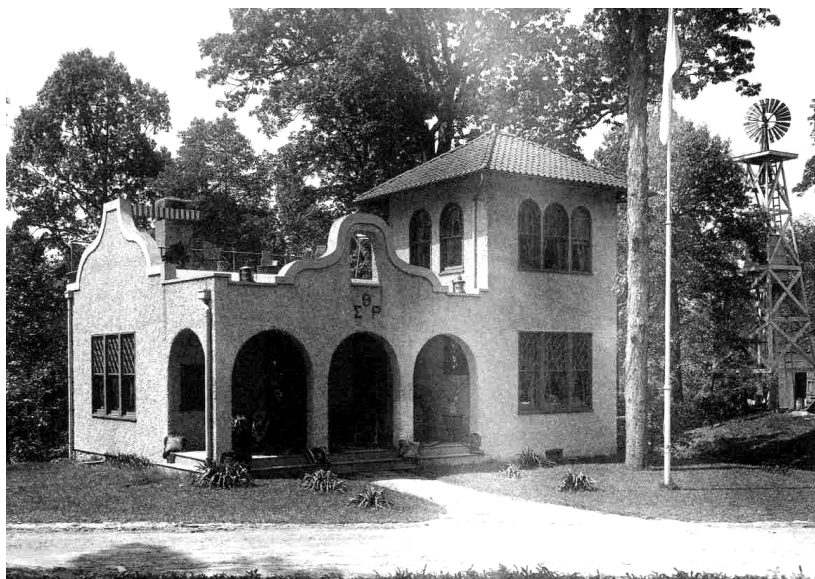
**Front of Main Building,
Facing Glen (left)**

Gymnasium



**Courtyard behind
Main Building**

**Mission-style
Sorority House**





Italian Villa



Interior of Ballroom



English Garden Castle

**Windmill and Bridge
Leading to Castle/Villa**



The Seminary operated until 1943, when the United States acquired the property via eminent domain under the War Powers Act. The site was operated as a United States Army rehabilitation hospital for recovering veterans through the end of the Vietnam War. During that period, new buildings were added to the site and changes were made to existing buildings,

apparently without regard to their historic character. Over time, the Army began contemplating other uses for the site that would have required demolishing the existing buildings. Community residents and preservationists organized in opposition, and succeeding in having the site placed on the National Register in 1972 and the County Preservation Plan in 1979, which prevented the Army from tearing the buildings down. The opposition was spearheaded by the citizens' group Save Our Seminary, which has worked tirelessly for three decades to save this site.

The Army used some of the buildings for research and office space for a time, then boarded them up and left them dormant and neglected. The buildings were subject to repeated acts of vandalism and theft, as well as the damage that results from deferred maintenance. In 1993, the Odeon Theater burned down as a result of arson. As the heating systems deteriorated, frozen water pipes burst in many locations, causing extensive damage. Leaks and holes in the roofs caused additional water damage, leading to floor collapses. At this point, the historic buildings are severely damaged, and many appear to be on the brink of collapse. The photographs below and on the following pages provide an idea of current conditions.

Main Building and Fountain





Gymnasium

Italian Villa



Windmill

**Courtyard behind
Main Building**



**Pagoda, Renovated
in 1999 by Save Our
Seminary**

English Garden Castle





Water Damage

Water Damage



**Interior Damage in
Senior House, attached
to Main Building**

After the Army made it clear that the site would be treated as surplus property, Montgomery County entered into an agreement with the federal General Services Administration (“GSA”), in early 2003, to acquire the subject property. The County issued a Request for Proposals, with input from Save Our Seminary, in May 2003. In December 2003 the County selected the current development team, which pairs The Alexander Company, a firm with extensive experience in the adaptive use of historic structures, with Eakin Youngentob Associates, Inc. (“Eakin”), a local company that has expertise in new home construction and the Montgomery County real estate market. In October 2004, the GSA transferred ownership of the subject property to Montgomery County. The County imposed the Maryland Historic Trust preservation easement on the property, then immediately transferred title to the Applicant, a joint venture between The Alexander Company and Eakin.

The Applicant is working to stabilize the historic buildings, but the evidence made very clear that time is a critical factor in the success of the proposed redevelopment. MNCPPC and other county offices have processed this application as quickly as possible under the Green Tape process. The crucial role of time in this project is reflected in a clause of the acquisition documents that authorizes the Applicant, at its option, to return title to the GSA if all land use approvals are not secured within 18 months of the October 2004 date when the Applicant gained control over the property.

The subject property was mapped “A,” one-family residential, on the original zoning map adopted in 1928. This zoning was reconfirmed on a 1941 zoning map. In 1954, the site was re-mapped to the R-90 Zone. This zoning was confirmed by sectional map amendment in 1989 (SMA G-642), 1997 (G-744), 1998 (SMA G-761) and 2001 (SMA G-787).

D. Proposed Development

The Applicant proposes to comprehensively redevelop the subject property, creating a residential community with a maximum of 280 dwelling units, plus the transitional men’s shelter.

The preliminary breakdown of unit types is as follows:

Multi-family units	169
Townhouse units	98
Single-family detached units	<u>13</u>
Total	280

The 280 units will be a combination of adaptive reuse of historic structures and construction of new homes. Adaptive re-use of historic structures will restore the exteriors to their historic appearances while renovating the interiors in a manner that respects the historic fabric, but gives residents the experience of living in a new building. A minimum of 20 percent of the units will be affordable, substantially exceeding the County's requirement for Moderately Priced Dwelling Units ("MPDUs"). These will be rental units located in the main historic building.³ The preliminary breakdown between adaptive reuse and new construction is described below:

- Approximately 96 one- and two-bedroom apartments will be created in the main historic building, including about 56 rental units that qualify as affordable housing, plus slightly larger, more expensive condominium units.
- Ten of the historic buildings will be renovated into about 70 condominium units.
- Thirteen free-standing buildings, at least 12 of them historic, will be renovated and sold as single-family detached homes. These include the more fanciful buildings such as the pagoda, the villa, the castle and the windmill.
- A total of approximately 98 new townhouses will be created; 39 will be on Lot 2, south of Linden Lane; 51 will be built within the historic district, on land that is currently undeveloped or is occupied by structures that do not contribute to the historic district and are scheduled for demolition; and eight will be located in a cluster near the northeastern corner of the site, accessed via Smith Road.

The development is planned to proceed in two phases. Phase One will include the bulk of the units, approximately 257 in total. Phase Two will be limited to approximately 14 multi-

³ The Applicant reports that the Montgomery County Department of Housing and Community Affairs has approved this arrangement.

family units in the villa, one single-family dwelling in the castle, and the eight townhouses on Smith Road, a total of 23 units. These units are planned as a second phase because they are located on the far side of the Glen, presenting unique challenges for vehicular access and utilities.

Below is a conceptual view of what the new development will look like.

Conceptual Site Plan, Ex. 67



In addition to the 280 dwelling units, the Development Plan allocates space within the main historic building for the transitional men's shelter. It provides for the renovation of the ballroom in the main building, which is to be accessible to the public on a limited basis. It also provides for extensive renovation of the grounds, recognizing that the natural environment is an

integral component of this development. Landscaping work will including clearing invasive species that now dominate the Glen, replacing them with new native plantings, adding ornamental plantings in the upland areas of the site consistent with the historic landscaping, and renovating and relocating historic statuary that once were found throughout the site. The Applicant intends the resulting campus to be a park for the entire community, welcoming and open, with opportunities for strolling, seating areas for relaxation and open areas for play.

The rambling nature of the historic building locations and the variety of their architecture present many options for private outdoor space, semi-private outdoor space and public open space. Residents will have access to nature via private balconies and patios, semi-private courtyards and gardens, the public lawn, the Glen and park access.

An extensive pedestrian circulation network is planned, including a historic interpretive trail, open to the public, that will connect the park land southwest of the site with the Glen. The trail is being designed with help from Save Our Seminary so as to facilitate both formal and self-guided tours of the site. One key element will be a new trailhead for hikers and bikers that will access a historic connection to Rock Creek, which will serve as an amenity for residents of the site and its neighbors.

Parking will be provided in the historic district primarily through scattered surface parking lots, with the largest lot extending along the front of the main building. Two historic condominium buildings will have underground parking. Most of the new townhouses in the historic district will have rear-access, two-car garages. Guest parking will be available through parallel parking on interior streets, as well as the surface parking lots. The eight small townhouses near the villa will have one-car garages with front access. All of the new construction south of Linden Lane will have two-car garages with rear access. Guest parking will be available on the street.

The record contains extensive evidence concerning architectural designs. The preservation easement requires that the exteriors of the historic buildings be restored to look very much as they did during the appropriate historical era. For new construction, the Applicant has

carefully selected the building types and architectural styles to achieve maximum compatibility with the historic district and the surrounding area. Within the historic district, the Applicant selected two styles, Tudor and Mission, that are well represented among the existing buildings and can be adapted to create marketable new homes. Artists' renderings of some of the elevations proposed for these units are reproduced below. The buildings where these styles are applied will contain individual townhouse units, each 18 feet wide, but will be designed to have the appearance of a single, large building. The buildings will be similar in height to adjacent historic structures, with either three stories plus an English basement or four stories. All will have garages in the rear, and many will have roof decks.

Front Elevations for Tudor-Style Townhouse Buildings, Ex. 60(a)



Front Elevations for Mission-Style Townhouse Buildings, Ex. 60(g)



South of Linden Lane, the Applicant looked to the residential neighborhoods in the surrounding area for architectural inspiration. In exploring the neighborhoods, the architects saw a large number of smaller bungalows and cape cods. They saw many front porches in the area, so

they incorporated that into some of the designs. They incorporated the colonial building materials of the cape cods, mainly siding and brick veneer. They placed the garages in the rear of the units, accessed from alleys, to provide an attractive streetscape and promote pedestrian activity. The two unit types shown on the Land Use Plan for Parcel 2 are townhouses and a 32-foot-wide “courtyard home.” The courtyard home is a single-family attached dwelling, but it has some of the look and feel of a single-family detached home because it is quite wide and has only two stories. The courtyard home is so named because its front façade has two planes, with a forward projection marked by a gable, and a rear portion that has the front door, creating an entry courtyard off the street. An artist’s rendering of a string of courtyard units follows.

Front Elevation for Courtyard Unit Type, Excerpted from Ex. 46



The other unit type proposed south of Linden Lane is a 24-foot-wide townhouse with three to four stories. Some will have English basements, depending on topography, and many will have the front porches that are common in the area. A conceptual view of these units is shown on the next page.

Townhouse Unit Type South of Linden Lane, Ex. 60(I)



The smallest townhouses will be the eight units along Smith Road, which will have a one-car garage with front access. They will not be without charm, however, because they will back onto the Glen.

Testimony indicated that the new construction is likely to attract two primary demographic groups: “empty nesters,” i.e., couples whose grown children have left the home, who often prefer two-level courtyard homes, and singles or young couples who enjoy townhouse living. See Tr. at 101-102.

E. Land Use Plan, Binding Elements and Preservation Easement

Pursuant to Code § 59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone. This development plan must contain several elements, including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. Code §59-D-1.3. The Development Plan, and the Land Use Plan that constitutes one of its primary elements, are binding on the Applicant except where particular elements are identified as illustrative or conceptual. The Development Plan is subject to site plan review by the Planning Board, and minor changes may be made at that time. The principal specifications on the Development Plan – those that the District Council considers in evaluating compatibility and compliance with the zone,

for example – may not be changed without further application to the Council to amend the Development Plan.

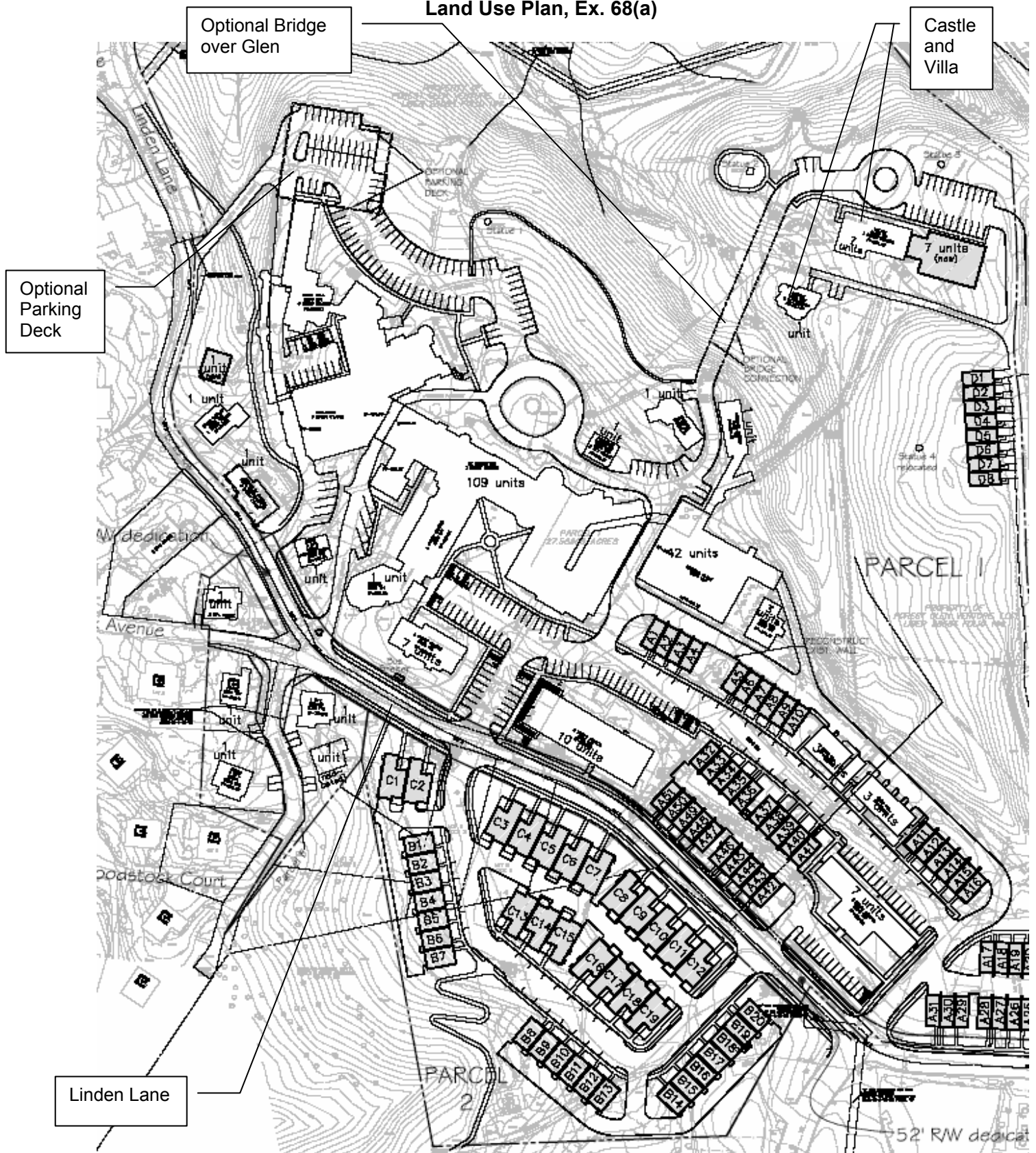
The principal component of the Development Plan in this case is a Land Use Plan, Exhibit 68(a), which is reproduced on the next page. The Land Use Plan shows site access, approximate locations of existing and proposed buildings and structures, parking areas, and intended right-of-way dedications, and describes areas of the site that will be open to the public. The Land Use Plan specifies that locations of buildings, parking areas and utilities are approximate, with final locations to be determined during site plan review. Unit types are identified as small, medium or large townhouses and adaptive reuse buildings, with a notation that buildings identified for adaptive reuse will be reused if feasible, and otherwise, new construction will be substituted substantially within the existing building footprint.⁴ It specifies that the exact number of parking spaces, final unit and bedroom count and amount of green space provided will be determined during site plan review. The Land Use Plan also describes the preservation easement held by the Maryland Historic Trust, identifying where it may be found in county land records.

Additional elements of the Development Plan have been submitted through extensive exhibits, including a vicinity map (Ex. 38(b)), a Natural Resources Inventory/Forest Stand Delineation (“NRI/FSD,” Ex. 6), a roadway exhibit showing planned road improvements (Ex. 55), a circulation plan (Ex. 38(e)), and a pedestrian network plan (Ex. 58).

The Land Use Plan contains five textual binding elements, which are reproduced in full on page 21. These elements limit the number of residential units to 280; provide for two phases of construction, with the flexibility to shift units between phases; commit the Applicant to placing a conservation easement on the Glen; require the construction of a historic interpretative trail that is open to the public during daylight hours; and specify that at least 20 percent of the units will be designated as affordable housing according to applicable government codes.

⁴ This notation recognizes the reality that with the extensive deterioration going on in most of the existing buildings, some may be too far gone to be saved.

Land Use Plan, Ex. 68(a)



Textual Binding Elements of Land Use Plan, Excerpted from Ex. 68(a)**BINDING ELEMENTS:**

1. DEVELOPMENT SHALL BE LIMITED TO A MAXIMUM OF 280 UNITS (NOT INCLUDING TRANSITIONAL HOUSING UNITS TO BE RELOCATED FOR CATHOLIC CHARITIES).

2. THE DEVELOPMENT SHALL BE CONSTRUCTED IN TWO PHASES AS SHOWN ON THE DEVELOPMENT PLAN. THE DEVELOPMENT MAY PROCEED IN A MANNER THAT PERMITS THE APPLICANT TO ADJUST THE PLANNED SEQUENCE OF CONSTRUCTION.

FURTHERMORE, AT SITE PLAN, THE NUMBER OF RESIDENTIAL UNITS IN EACH PHASE, PARCEL OR BUILDINGS MAY BE SHIFTED BETWEEN PHASES, PARCELS OR BUILDINGS AS LONG AS THE TOTAL NUMBER OF UNITS DOES NOT EXCEED 280 (NOT INCLUDING THE TRANSITIONAL HOUSING UNITS).

3. DURING THE DEVELOPMENT PROCESS, AND AS PART OF THE FINAL FOREST CONSERVATION PLAN, THE APPLICANT (OR ITS SUCCESSORS OR ASSIGNS) SHALL FINALIZE AND AGREE TO RECORD AS PART OF THE RECORD PLATS FOR EACH OF THE DEVELOPMENT PHASES, CONSERVATION EASEMENTS OVER THE GLEN (THE "CONSERVATION EASEMENT AREAS"). THESE CONSERVATION EASEMENT AREAS ARE TO REMAIN UNDISTURBED IN THEIR NATURAL WOODED STATE, IN PERPETUITY, EXCEPT FOR THE CONSTRUCTION AND/OR MAINTENANCE OF STABILIZED STORMWATER OUTFALL SYSTEM(S), SEWER LINES AND OTHER UTILITY CONNECTIONS, WHICH, AFTER CONSTRUCTION AND/OR MAINTENANCE ACTIVITIES ARE COMPLETED, SHALL BE ALLOWED TO REVERT NATURALLY TO THEIR WOODED CONDITIONS. THE APPLICANT ALSO SHALL BE PERMITTED TO CONSTRUCT TRAILS AND WALKWAYS IN THE CONSERVATION EASEMENT AREAS AND CONDUCT OTHER ACTIVITIES WITHIN THE CONSERVATION EASEMENT AREAS, INCLUDING THE REMOVAL OF INVASIVE SPECIES, IF APPROVED AS PART OF THE SITE PLAN APPROVAL PROCESS.

4. THE APPLICANT SHALL CONSTRUCT A HISTORIC INTERPRETATIVE TRAIL THAT CONNECTS THE M-NCPPC OWNED "SVU 2", WHICH ADJOINS ROCK CREEK PARK, TO THE GLEN. THE APPLICANT SHALL FURTHER REFINE THIS HISTORIC INTERPRETATIVE TRAIL, INCLUDING ITS DESIGN AND LOCATION, AS PART OF THE SITE PLAN APPROVAL PROCESS. THIS HISTORIC INTERPRETATIVE TRAIL SHALL BE OPEN TO THE GENERAL PUBLIC DURING DAYLIGHT HOURS.

5. A MINIMUM OF 20% OF THE UNITS TO BE CONSTRUCTED SHALL BE DESIGNATED AS AFFORDABLE HOUSING UNITS PURSUANT TO APPLICABLE GOVERNMENTAL CODE PROVISIONS, RULES AND REGULATIONS. THE FINAL NUMBER OF AFFORDABLE UNITS SHALL BE DETERMINED AT SITE PLAN, BASED ON THE FINAL UNIT COUNT FOR THE ENTIRE DEVELOPMENT.

The Legend, General Notes and Development Program that appear on the Land Use Plan are provided on the following pages.

LEGEND:

ADAPTIVE REUSE BUILDING - THESE BUILDINGS WILL BE ADAPTIVELY REUSED IF FEASIBLE. OTHERWISE, NEW CONSTRUCTION SUBSTANTIALLY WITHIN THE EXISTING BUILDING FOOTPRINT WILL BE PROVIDED.



LARGE REAR-LOAD TOWNHOME UNIT



MEDIUM REAR-LOAD TOWNHOME UNIT



SMALL REAR-LOAD TOWNHOME UNIT



SMALL FRONT-LOAD TOWNHOME UNIT

General Notes 1 through 7 of 17

1. THE HORIZONTAL DATUM IS MARYLAND STATE PLANE (NAD83) & IS BASED ON WSSC CONTROL STATIONS 20341 (BM 5921), 20526 (BM 6020) AND BM 5093.

2. THE SUBJECT PROPERTY LIES WITHIN ZONE C (AREA OF MINIMAL FLOODING) AS SHOWN ON FLOOD INSURANCE RATE MAP (FIRM) COMMUNITY PANEL NUMBERS 0175C & 0200C FOR MONTGOMERY COUNTY, MARYLAND, DATED AUGUST 5, 1991.

3. THE SUBJECT PROPERTY IS LOCATED ON TAX ASSESSMENT MAP NUMBERS HP561 & HP562.

4. BOUNDARY SURVEY WAS PREPARED BY VIKI, INC. DATED JULY 2004.

5. THIS SITE IS LOCATED IN THE ROCK CREEK WATERSHED AND IS CLASSIFIED AS USE 1P.

6. THE PROJECT IS PROPOSED TO BE SERVED BY PUBLIC WATER AND SEWER SYSTEMS AND IS CURRENTLY IN WATER AND SEWER SERVICE CATEGORIES W-1 & S-1 RESPECTIVELY.

7. THE SUBJECT SITE IS LISTED AS NATIONAL PARK SEMINARY ON THE NATIONAL REGISTER OF HISTORIC PLACES (1972) AND IS ALSO DESIGNATED ON THE MONTGOMERY COUNTY MASTER PLAN FOR HISTORIC PRESERVATION (1979).

General Notes 8 through 17 of 17

8. PUBLIC UTILITY EASEMENTS & RIGHTS OF WAY WILL BE PROVIDED ON SITE WHERE NEEDED TO ALLOW FOR WATER, SEWER, GAS, ELECTRIC, TELEPHONE & CABLE SERVICE TO THE PROPOSED BUILDINGS. EXACT LOCATIONS TO BE DETERMINED AT SITE PLAN.

9. THE PROPERTY, INCLUDING THE OPEN SPACE, WILL BE SUBJECT TO SITE PLAN REVIEW. THE APPLICANTS, ON BEHALF OF ITSELF OR ITS SUCCESSORS AND ASSIGNS, WILL PROVIDE FOR PERPETUAL MAINTENANCE OF OPEN SPACE AREAS AND OTHER AREAS USED FOR RECREATIONAL, COMMON OR QUASI-PUBLIC PURPOSES.

10. GENERAL BUILDING LOCATIONS PROVIDED; PRECISE LOCATIONS TO BE DETERMINED AT SITE PLAN.

11. THE APPLICANT WILL BE SEEKING A WAIVER OF THE REQUIREMENT OF SECTION 59-C-7.15.

12. FINAL DETERMINATION OF THE REQUIRED AND PROVIDED PARKING SHALL BE DETERMINED DURING THE SITE PLAN REVIEW PROCESS.

13. FINAL UNIT AND BEDROOM COUNT WILL BE DETERMINED DURING THE SITE PLAN REVIEW PROCESS

14. THE CATHOLIC CHARITIES TRANSITIONAL HOUSING UNITS ARE IN ADDITION TO THE PROPOSED DENSITY.

15. FINAL AMOUNT OF GREEN SPACE PROVIDED SHALL BE DETERMINED DURING THE SITE PLAN REVIEW PROCESS.

16. THE ENTIRE COMPLETION OF A PHASE IS NOT NECESSARY FOR THE COMMENCEMENT OF ANY SUBSEQUENT PHASE(S). DUE TO THE IMPRACTICALITY OF JUDGING MARKET AND ECONOMIC CONDITIONS FOR THIS TYPE OF DEVELOPMENT AT ANY GIVEN TIME, FLEXIBILITY IS NEEDED SO THAT THE DEVELOPMENT MAY PROCEED IN A MANNER THAT ADJUSTS THE PLANNED SEQUENCE OF CONSTRUCTION. THE NUMBER OF RESIDENTIAL UNITS IN EACH PHASE, PARCEL OR BUILDING MAY BE SHIFTED BETWEEN PHASES, PARCELS OR BUILDINGS; HOWEVER, THE NUMBER OF TOTAL UNITS IN THE DEVELOPMENT WILL NOT EXCEED 280 UNITS.

17. MHT EASEMENT- THE PROPERTY THAT IS THE SUBJECT OF THIS DEVELOPMENT PLAN IS ENCUMBERED BY A DEED OF EASEMENT ("MHT EASEMENT") DATED OCTOBER 25, 2004 BY AND BETWEEN THE COUNTY EXECUTIVE AND COUNTY COUNCIL OF MONTGOMERY COUNTY, MARYLAND, ITS SUCCESSORS AND ASSIGNS AND THE MARYLAND HISTORICAL TRUST, AN INSTRUMENTALITY OF THE STATE OF MARYLAND, RECORDED AMONG THE LAND RECORDS FOR MONTGOMERY COUNTY AT LIBER 28584 AT FOLIO 168. THE MHT EASEMENT ADDRESSES: (i) PUBLIC ACCESS TO THE EXTERIOR OF THE PROPERTY AND CERTAIN INTERIOR SPACES, (ii) MAINTENANCE OBLIGATIONS, (iii) REQUIREMENTS FOR CHANGES AND ALTERATIONS TO THE PROPERTY AND STRUCTURES THEREIN, (iv) PROTECTION OF ARCHEOLOGICAL RESOURCES, IF ANY, (v) MHT INSPECTION RIGHTS AND (vi) REMEDIES FOR A BREACH.

DEVELOPMENT PROGRAM

PD-15 Development Standards

Site Area	31.79 acres
Maximum Density Permitted	15 Units/Acre = 476 Units
Maximum Density Proposed	8.81 Units/Acre = 280 Units
MPDUs	Required - 12.5% = 35 Units Provided - 20% = 56 Units

Unit Type by Parcel

Parcel 1

18' x 40' Townhouse	51
Front-load Townhouse	8
Total Townhouse	59
One-Family Detached	13
Multiple-Family, 4 Story or less	128
Multiple-Family, over 4 Story	41

Parcel 2

32' x 60' Townhouse	20
24' x 40' Townhouse	19
Total Townhouse	39

Minimum/Maximum Percentage of Units Allowed by Unit Type

One-Family Detached	Permitted (No Minimum/Maximum)
Townhouse	10% Minimum (No Maximum)
Multiple Family, 4 Story or less	25% of Minimum, 75% Maximum
Multiple Family, over 4 Story	Permitted, (No Minimum) 30% of Maximum

Percentage of Units Proposed by Unit Type

One-Family Detached	5%
Townhouse	35%
Multiple Family, 4 Story or less	46%
Multiple Family, over 4 Story	14%

Green Area Required	50% of Gross Area
Green Area Proposed	65%

Parking

	Required/Permitted	Proposed
<u>One Family Detached/Townhouse</u>		
11 Units x 2.00 spaces per unit	222	245
<u>Multiple Family</u>		
<u>Minimum Parking</u>		
1 st BR: 43 Units x 1.25 spaces per unit	54	
2 BR: 88 Units x 1.50 spaces per unit	132	
3 BR: 38 Units x 2.00 spaces per unit	76	
	262	271

Catholic Charities

Transitional Housing for 32 individuals	19	19
Minimum Parking	503	535*

* This 535 parking count is based on the surface parking option. It does not include any parking from the optional parking deck.

F. Master Plan

The Master Plan specifically addresses the subject property because of its historic status and the deteriorated condition of the existing buildings. When the Master Plan was adopted in 2000, the Army and the GSA were actively working to transfer the property to another government agency or a private entity. The Master Plan did not anticipate the particular plan now presented, but it did foresee the need to provide guidance for evaluating any reuse proposal. The Master Plan's first recommendation in this regard was that a minor master plan amendment should be prepared if the proposed reuse cannot be accommodated by the existing R-90 zoning. Master Plan at 40. That recommendation noted that a minor master plan amendment would allow for limited modification to the Master Plan "to respond to changing community conditions or for occasional clarification of recommendations." Master Plan at 42. In addition, the text of that very recommendation contemplates the possibility that development may proceed without a minor master plan amendment – the final sentence of that recommendation introduces six guidelines that "should serve as the basis for the minor master plan amendment or for development, should it proceed without an amendment." *Id.*

Technical Staff opined that that there have not been any significant changes in the area surrounding the subject property since the Master Plan was adopted, and that the Master Plan's guidelines for the subject property do not need any clarification. Staff also observes that the approval process for the PD Zone provides an opportunity for Council oversight and analysis that is similar to a minor master plan amendment, and concludes that "it is clear to staff that a minor master plan amendment is not warranted." Staff Report, Ex. 39 at 6. The Applicant notes that the present zoning case has afforded interested parties an adequate opportunity to comment and participate, and that the continuing, rapid deterioration of the existing buildings makes it imperative that any adaptive reuse occur as soon as possible.

The Master Plan's six guidelines for reuse of the subject property are set forth below:

(1) Maintain and restore the district's historic integrity, including the buildings, relationships between the buildings, and the character of the open space.

If the property is subdivided into private lots, those lots should be situated to accommodate planned uses and supporting activities (parking, loading, and access) while meeting other development guidelines.

(2) Limit impacts on environmentally sensitive areas and provide for private conservation easements or public ownership.

(3) Consider, where compatible with the proposed use(s), the ability to allow access (either public or for-fee) to buildings with public or quasi-public uses such as the Ballroom, the Chapel, and the Pagoda.

(4) Minimize traffic impacts on surrounding neighborhoods and roadways primarily through low-traffic-generating uses.

(5) Minimize noise, light, and other environmental impacts on the surrounding residential neighborhoods.

(6) Provide trail connections as recommended in this Plan.

Both Technical Staff and the Applicant's land planners provided substantial analysis to support their conclusions that the rezoning and development proposed in this case conform to the Master Plan. See Staff Report at 7-8, Ex. 19 at 33-37; Landfair and Rodriguez testimony. Their findings with regard to each of the six guidelines are summarized below.

(1) Historic Integrity. Staff observed that the Historic Preservation Commission has reviewed the land use plan and the architectural illustrations and supports the plan, concluding that it reflects a balance of new construction and rehabilitation of nearly all historic buildings. Staff notes that restoration of the historic district's integrity is literally accomplished by adaptive reuse of the buildings, which will bring in homeowners and tenants with a more direct interest in building maintenance than the Army, and that residential use will bring moderate levels of activity to vacant buildings and seldom-used open spaces.

Technical Staff finds that the main change proposed by the Applicant in the relationships between existing buildings is new access patterns, which are necessary to support

the residential development. Staff notes that new construction should be sensitive to the integrity of existing historic buildings, and that the proposed Tudor and Mission architectural styles will accomplish this goal.

Technical Staff further notes that the preservation easement gives the Maryland Historic Trust authority over design review and approval, which is a level of scrutiny that does not normally apply.

The Applicant's planners emphasize that all aspects of the Development Plan, from the restoration and preservation of existing historic structures to the design of the new townhomes, the landscape plan and the vision for Linden Lane, have been designed specifically to maintain and restore the district's historic integrity. They note that:

- all of the contributing historic structures that can be saved will be saved -- the only demolition of contributing historic structures currently planned are half of the villa building, and a single house located on Parcel 2, outside the designated historic district, both of which are beyond repair;
- the new buildings proposed within the historic district have been designed to complement the existing structures, using architectural themes found in the district;
- the landscape plan focuses on restoration, replacement and renewal;
- the improvements for Linden Lane are designed to create a pedestrian-friendly, residential street consistent with the historic "country lane" feel that currently exists, while making the roadway safer and discouraging cut-through traffic; and
- the Glen will be retained as a beautiful, public open space with historic statuary reintroduced and historic walking paths reclaimed.

(2) Environmental Impacts. Technical Staff notes that the primary environmental benefits of the proposed development are the reuse of existing buildings and the construction of

new buildings (in the historic district) in the footprint of buildings that will be demolished or are already gone. Staff observes that the Land Use Plan does have some impacts on environmentally sensitive areas, and that further efforts will be made at site plan to limit such impacts. In addition, the binding elements provide for a conservation easement over the Glen, which will implement the County's forest conservation law.

The Applicant's planners view the natural features of the subject property as "unique assets that will set this development apart from many others" and deserve particular attention. Ex. 19 at 34. They note that the Applicant proposes approximately 8.8 dwelling units per acre, far lower than the 15 d.u./acre permitted under the zone requested, PD-15. This allows the preservation of significant green space. Moreover, a binding element provides for a conservation easement to preserve the largest portion of that green space, the Glen, in perpetuity. The Applicant's planners note that site planning in the historic district was reworked to preserve almost all of the specimen trees, and new construction has been concentrated in areas with the least environmental sensitivity.

With regard to the stream valley buffer, the Applicant's engineer explained that the Land Use Plan will pull the existing development slightly away from its current encroachments into the buffer, although two potential elements of the plan that are described as "optional" would involve minor additional encroachments. See Irish testimony. As discussed in Part G below, Technical Staff identified three areas on the Land Use Plan with undesirable environmental impacts, but suggested that they be addressed at site plan.

(3) Public Access. Technical Staff notes that the Applicant intends to make the Ballroom available for public use, but both the Chapel and the Pagoda are slated for use as private homes. Staff observes that the nature of the site and the surrounding neighborhood, as well as parking limitations, constrain possible uses of the buildings that would draw large crowds. Staff suggests that the Homeowner's Association for the development may have

activities in the ballroom, and notes that site tours by Save Our Seminary must continue under the terms of the Maryland Historic Trust easement.

The Applicant's planners suggest that the ballroom will be available for community meetings, dance lessons, neighborhood gatherings and educational courses, and that the Applicant is working with the community to address their desires via a visit to the ballroom.

(4) Low-Traffic-Generating Uses. Staff opines that the choice of a residential development has advanced this objective, because residential uses generally generate fewer vehicle trips than commercial uses. The Applicant's transportation planner stated, for example, that a 2,000-square-foot house typically generates about ten trips throughout the day, while an office building of the same size generates about four times that amount. Staff further notes that the Land Use Plan limits the unit density to a lower level than the maximum permitted in the PD-15 Zone, and that the Linden Lane improvements the Applicant proposes will make the roadway safer and calm traffic.

(5) Noise, light and other impacts on neighborhood. Both Technical Staff and the Applicant's land planners note that most of the subject property is not near existing residential neighborhoods, and that lighting, noise and other potential impacts will be residential in nature.

(6) Trail connections. Staff notes that the Land Use Plan provides for trail connections that are consistent with the Master Plan, and that public access to the Glen will be enhanced by the interpretive trail, improved trail head access, and traffic calming measures on Linden Lane.

The Applicants' planners note that the Master Plan's primary trail recommendation is to provide a connection for residents of the subject property and the surrounding neighborhood to the adjacent parkland, which the proposed Land Use Plan would accomplish.

G. Environmental Issues

The subject property has two primary forest stands: approximately 12 acres on the north side of the property, mostly in the Glen, and about half an acre in the southwest corner of the site, adjacent to the MNCPPC parkland.⁵ A proposed Forest Conservation Plan (Exhibit 54) shows the retention of approximately 9.2 acres of forest, which exceeds the requirement under the County's forest conservation law. See Irish testimony; Staff Report at A-22. Accordingly, no afforestation or reforestation will be required. Moreover, the Applicant is not seeking forest conservation credit for proposed landscaping, or for forested areas that will be temporarily disturbed for the installation of utilities and then allowed to revert to forest.

Technical Staff notes that a Category I Forest Conservation Easement will be required for any forest that is credited for forest conservation, and that trails in such areas must be natural surface rather than paved.

Environmental Staff at the MNCPPC notes that the Development Plan shows environmental impacts in three places that can be reduced by adjustments to be addressed during site plan review. The first is the potential parking deck in the northwest corner of the site, which would encroach on the stream valley buffer and on the critical root zone of a 60" county co-champion tree. This parking deck is described on the Land Use Plan as "optional," clearly indicating that it is up for discussion during site plan review. The Applicant's engineer testified that a parking structure at this location would have benefits from a storm water management perspective, by catching water that otherwise might run down the slope.

The second concern identified by Environmental Staff is encroachment on the highest priority forest in the southwest corner of the site by residential units, pathways and stormwater management structures. The Applicant's engineer testified that the primary issues are

⁵ The NRI/FSD was prepared based on the acreage included in the original LMA application, so it covers the area now proposed for rezoning, plus an additional 0.2 acres adjacent to Smith Road where the Walter Reed salt dome and warehouse are located. Forest conservation requirements have been retabulated based on the area included in the present rezoning request.

construction of the trail head and storm water management, and that they are working with Staff to decide how to accomplish their goals without adverse impacts on significant trees. Tr. at 180.

The third area of concern for Environmental Staff is the potential vehicular bridge that would connect the villa and the castle with the main portion of the site. The bridge would extend from a traffic circle behind the villa to the edge of an existing impervious driveway on the south side of the Glen. It is shown with dotted lines and identified as “Optional” on the Land Use Plan, also a subject for negotiation during site plan review. Environmental Staff recommends that the bridge be removed from the plans to avoid adverse impacts on the streambed and forest. The original bridge at that location collapsed during the 1990s. The Applicant acknowledges that vehicular access to the villa and the castle is already available via Smith Road, but Smith Road is narrow, and they would like to have multiple means of access. In addition, a new bridge could serve as a utility corridor.

The subject property is identified in Appendix D of the *Legacy Open Space Functional Master Plan* as a potential Urban Open Space site. Technical Staff notes that while the site clearly meets Legacy Open Space criteria as a “best of the best” heritage site, in view of the redevelopment and preservation proposal currently under review, “there does not appear to be a beneficial role for the Legacy Open Space program to play.” Ex. 39 at 23.

Environmental Staff recommends approval of the subject application, noting that each of the issues they identified can be addressed during site plan review.

H. Storm Water Management

Because of the age of the development, the subject property does not currently have storm water controls. The Applicant’s engineer, Charles Irish, testified that the proposed storm water management system will maintain natural drainage patterns while adding both quality control and channel protection (quantity control) measures. He noted that the Applicant submitted a storm water concept plan to the Department of Permitting Services (“DPS”) in November 2004, and is working with DPS to find creative solutions to protect the Glen and significant trees. Mr. Irish

opined that while the proposed development will increase the percentage of impervious area on the site from about 9.5 acres to about 13.7 acres, with modern storm water management controls, the net effect will be to improve the quality of run-off, decrease its quantity and make some stream channel improvements. The proposed development will be required to satisfy county standards for storm water management.

I. Development Standards for the Zone

As shown in the table on the next page, the proposed development will satisfy most of the applicable development standards under Code §§59-C-7.12 through C-7.18.

Development Standards in PD-15 Zone for Project with 200-800 Units

Element	Required	Proposed
Unit Mix	No minimum/maximum single family detached Minimum 10% townhouse/single family attached Minimum 25% and maximum 75% multi-family, maximum 30% over four stories	5% 32% townhouse 49% four stories and under 11% over four stories
MPDUs	32 units ⁶	At least 56 units ^{6*}
Density	15 dwelling units per acre	8.8 d.u./acre*
Compatibility	Proposed uses must be compatible with other proposed uses and with existing or proposed uses in the vicinity.	See Part IV.A. below
Green Area	50% minimum	65%
Parking	503 based on preliminary unit mix	535
Setbacks	100 ft. from property line for all structures other than single family homes	Waiver requested
Building Height	No greater than building setback	Waiver requested

* Denotes binding element

Several of the parameters listed above are not binding elements because of a need for flexibility in final design. However, it is clear that the minimum requirements can and will be met for all but setbacks and building height. The Zoning Ordinance authorizes the Planning Board to waive the setback and building height standards of the PD Zone, at site plan, under the following circumstances:

⁶ Based on maximum of 280 units. The MPDU requirement in the PD zones is the greater of the number of density bonus units or 12.5% of the total units. This Applicant is not seeking a density bonus.

The site is within or in close proximity to a historic district and the Planning Board finds that reduced setbacks or increased building height will facilitate the preservation, reuse, or redevelopment of a designated historic district and the immediately adjoining property will not be adversely affected by the waiver.

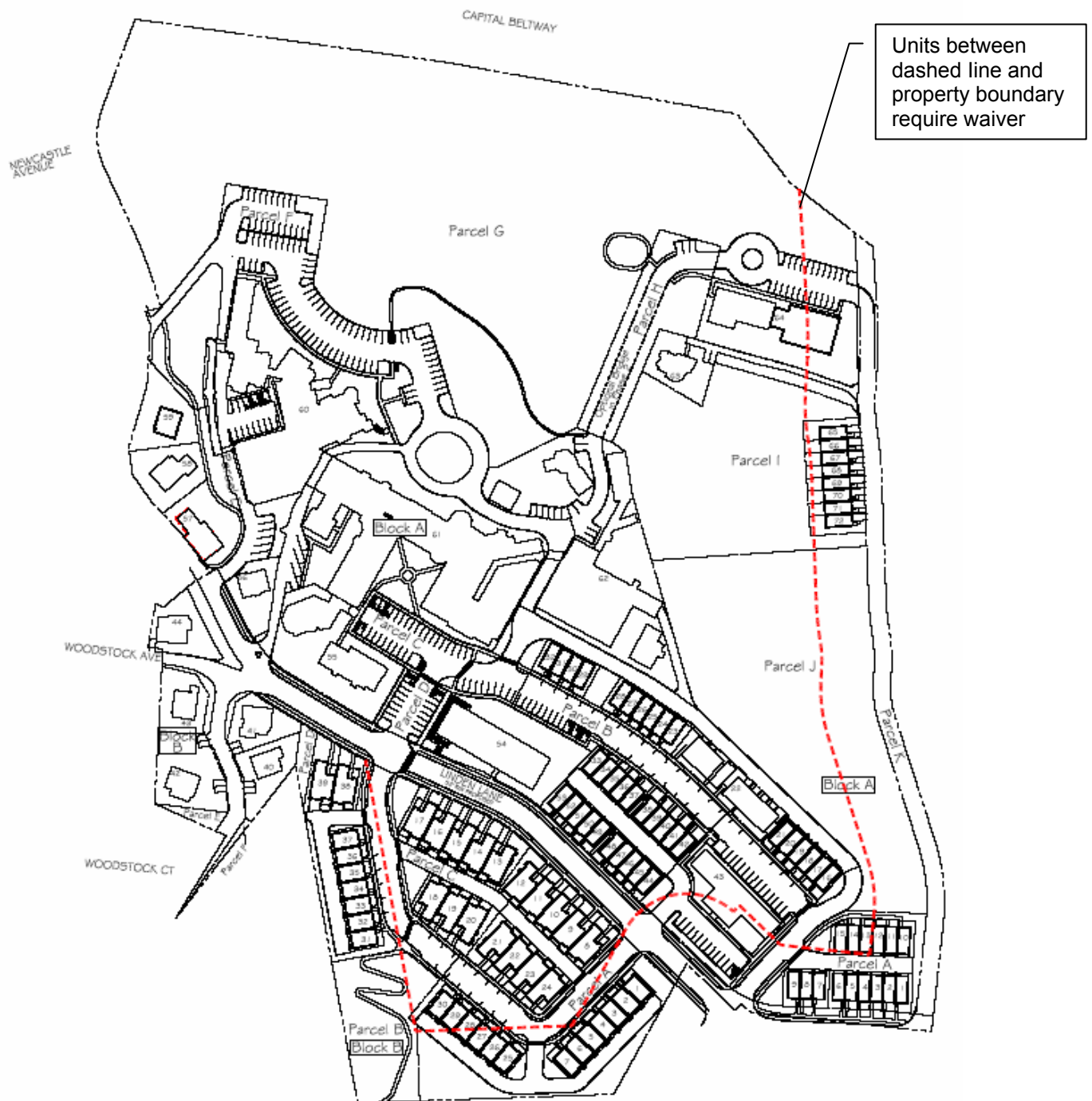
. . . The maximum building height under this waiver must not exceed 50 feet.

The Applicant has requested that if the District Council votes to approve the requested rezoning, its approval include a recommendation that the Planning Board grant the requested setback and building height waiver. The Planning Board's recommendation in this matter indicated support for the requested waivers. See Ex. 40.

As shown graphically on the next page, roughly 50 units that are not single-family detached homes, comprising about half of the proposed new units south of Linden Lane and a fair number of units in the historic district, are planned for locations within 100 feet of adjoining land that is recommended for one-family zoning. These structures also fail to comply with the related height restriction, as their heights exceed their setbacks. One of the Applicant's land planners, William Landfair, testified that denial of the waiver would have a tremendous impact on the project, and could prevent it from going forward. Mr. Landfair emphasized that virtually all of the affected buildings abut land that is zoned for residential use, but is used as parkland or part of the Walter Reed annex. Only a handful of units that exceed the setback and height standards will be in close proximity to single-family homes, and the homes they are close to are part of the proposed development. None of the building heights will exceed the 50-foot limitation.

The evidence made clear that the new construction south of Linden Lane is essential to generate the funds needed to restore the historic structures. Under these circumstances, the Hearing Examiner is in agreement with Technical Staff that the requested waivers will facilitate the redevelopment of the historic district, without material adverse effects on adjoining property, and therefore the waivers are appropriate.

Units Requiring Waiver of Setback and Building Height Limits, Ex. 51



J. Public Facilities

In evaluating the compatibility of a proposed development and whether it would serve the public interest, the District Council must consider whether the development would be

adequately served by and/or would have an adverse effect on public facilities. Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), the Planning Board has the responsibility, when it reviews a preliminary plan of subdivision, to assess the adequacy of transportation, schools, water and sewage facilities, and police, fire and health services to support the proposed development. The Planning Board's application of the APFO is limited by parameters that the County Council sets each year in the Annual Growth Policy ("AGP") and biennially in the two-year AGP Policy Element.⁷ While the ultimate test under the APFO is carried out at subdivision review, evaluation of public facilities at the zoning stage is particularly important because of the discretionary nature of the process and the opportunity for a more comprehensive review than may be available at subdivision. The District Council is charged at the zoning stage with determining whether the proposed development would have an adverse impact on public facilities and, if so, whether that impact would be mitigated by improvements reasonably probable of fruition in the foreseeable future.

1. Transportation

Under the 2003-05 AGP Policy Element, as of July 1, 2004 subdivision applications are subject to only one transportation test, Local Area Transportation Review ("LATR").⁸ The Planning Board recognizes its LATR Guidelines as the standard to be used by applicants in the preparation of reports to the Hearing Examiner for zoning cases. LATR Guidelines at 1. LATR involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion at nearby intersections during the peak hours of the morning and evening peak periods (6:30 to 9:30 a.m. and 4:00 to 7:00 p.m.).

The Applicant performed a traffic study as required in this case, taking into account existing roads, programmed roads, available or programmed mass transportation, and

⁷ See 2003-05 Annual Growth Policy – Policy Element, Resolution No. 15-375, adopted October 28, 2003. The Hearing Examiner hereby takes official notice of the 2003-05 AGP Policy Element.

improvements to be provided by the Applicant, as well as existing traffic, traffic anticipated from nearby development that is approved but unbuilt (referred to as “background” traffic), and trips expected to be generated by the proposed development. With 280 units, the proposed development is expected to generate a total of 135 and 202 additional peak hour trips during the morning and evening weekday peak periods, respectively. The traffic study concluded, and Technical Staff agreed, that with the proposed development in place, critical lane volumes (“CLVs”) at the key intersections studied would remain well below the CLV standard of 1,600 for the Silver Spring/Takoma Park Policy Area. See Ex. 39 at A-15-16.

The Applicant’s transportation planner, Wes Guckert, testified that his firm concluded that all of the relevant intersections will operate at a level of service (“LOS”) of C or better in both the morning and evening peak hours. He noted that LOS is a qualitative measure of the amount of delay drivers experience, stated as A (best) through F (worst). Mr. Guckert observed that under the AGP policy element, the County Council has determined that an LOS of E is acceptable. He stated that transportation planners in most jurisdictions typically consider an LOS of D or E acceptable, particularly in an urban area. He explained that an LOS of A or B indicates average delays at an intersection of up to 20 seconds per vehicle. At LOS F, the delay is well over 80 seconds per vehicle.

At Technical Staff’s request, the Applicant also performed a traffic signal study at the intersection of Linden Lane and Brookville Road. The study found that a traffic signal is warranted, even without the development of this project.

The Staff Report does not address potential trips generated by the transitional housing. The Applicant points out that these are not new trips; the use already operates on site, and will merely be moving to a different building. Technical Staff testified at the hearing that based on the nature of the use, the fact that the shelter residents don’t drive and there are only about five

⁸ See 2003-05 AGP Policy Element at 6-7; *Local Area Transportation Review Guidelines Approved and Adopted July 2004* (“LATR Guidelines”) at 1. The Hearing Examiner hereby takes official notice of the LATR Guidelines.

staff members, the transitional housing can be expected to generate only one or two peak hour vehicle trips. Given that the total CLV measured in the LATR study was hundreds of trips below the CLV standard for the policy area, it is clear that a de minimum number of additional trips from the transitional housing would have no effect on the traffic analysis.

As discussed further below, the present application enjoys widespread community support and minimal opposition. The only concern raised by supporters in the community is traffic safety. Linden Lane is a narrow, uneven road with no curb, sidewalks or shoulders in the vicinity of the subject property, and neighbors feel that the traffic goes too fast. The Seminary Advisory Board has suggested that the Applicant be required to mitigate traffic, and that the County appoint a transportation coordinator and establish a new Ride-On Bus route. See Letter from Seminary Advisory Board to County Executive, Ex. 42(a); see *also* letter from Linden Civic Association to Department of Public Works and Transportation and MNCPPC, Ex. 39 at A-26; letter from Save Our Seminary to Planning Board Chairman, Ex. 39 at A-25. Transportation Planning Staff at the MNCPPC concludes that the amount of traffic to be generated by the proposed project does not trigger requirements for a traffic mitigation agreement or trip reduction methods.

The Seminary Advisory Board also seeks traffic calming elements on Linden Lane to reduce speed, unsafe driving practices and cut-through traffic. For example, they suggest a maximum pavement width of 20 feet, rather than the 28 feet Technical Staff and the Applicant have agreed upon. Technical Staff believes that the 28-foot width is necessary to allow parking on at least one side of the street, which will relieve parking pressures, allow better public access, and calm traffic. Mr. Gucker testified that current conditions warrant traffic calming measures, but not as a result of the proposed project.

Mr. Irish, the Applicant's engineer, described in detail the improvements proposed for Linden Lane, which result from extensive negotiations with Technical Staff. The Applicant proposes to widen the portion of Linden Lane where the subject property abuts both sides of the road (the frontage through the main area of the site) to 28 feet curb-to-curb, with five feet from face

of curb to sidewalk, a five-foot sidewalk, and two feet of additional green space in a 52-foot right-of-way. This will require a waiver by DPS of the 70-foot right-of-way that normally applies to a primary roadway. The reduced width will be accommodated, in part, by prohibiting parking on one side of the street.

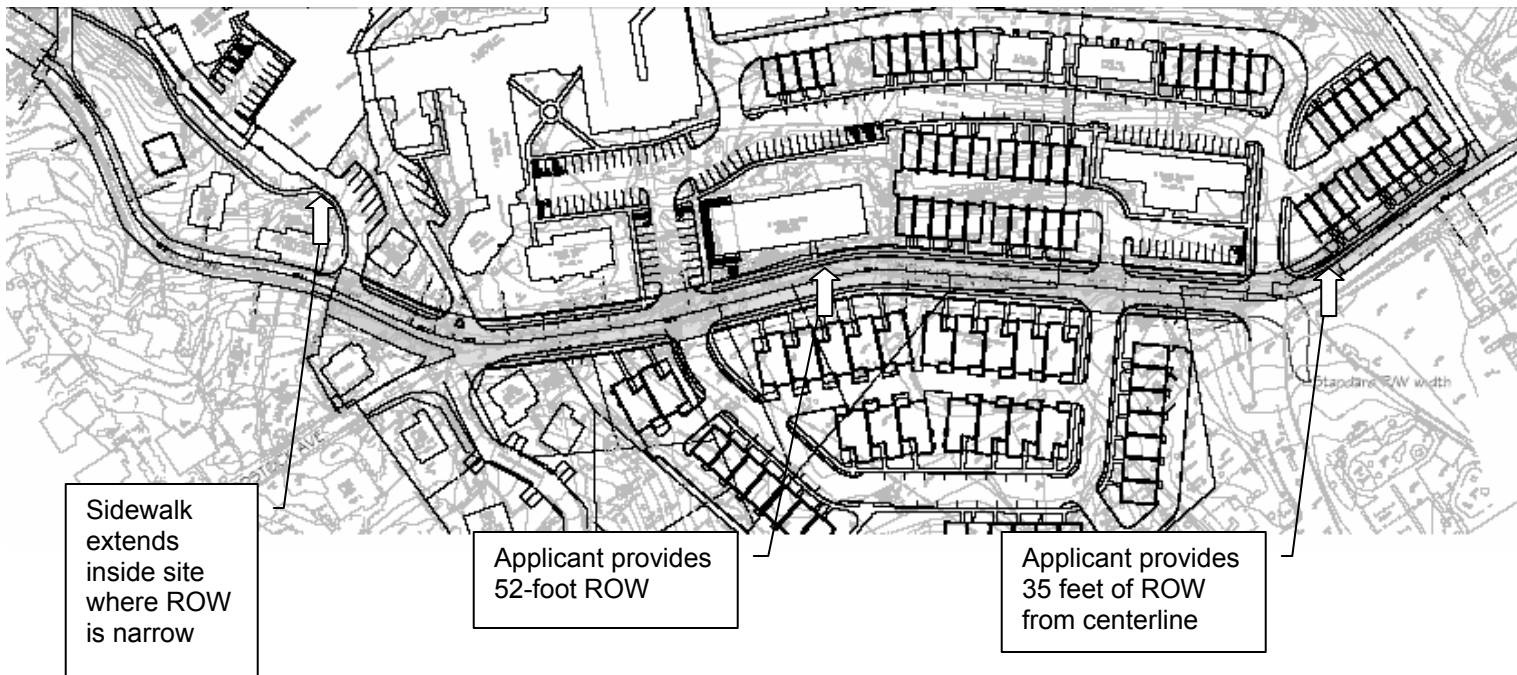
At the east end of the site, where the subject property abuts Linden Lane only to the north, the Applicant proposes to provide 35 feet of right-of-way from the center line of the road, the equivalent of the Applicant's half of a 70-foot right-of-way. The primary difference between the 70-foot and 52-foot sections will be the sidewalk setbacks. Where the right-of-way is wider, the sidewalks will be set back ten feet from the curb instead of five.

At the west end of the site, near the site entrance, the Japanese Pagoda sits almost on the roadway, so there is no room for road widening to the north. The Applicant does not control the property to the south at that location. Technical Staff acknowledges there is no expectation of a dedication in that area. Similarly, the nearby Swiss Chalet is set back about 35 feet from the center line of the road, so Technical Staff is not asking for a dedication at that location. From that point, as the road curves to the north, Technical Staff has asked the Applicant to dedicate its half of the 70-foot right-of-way. The Applicant has not agreed that such a dedication is necessary, so that issue still has to be worked out.

The narrow right-of-way at the west end of the site leaves no room for sidewalks until a point farther north, near the bridge where Linden Lane crosses over the Beltway. All parties agree that pedestrian access must be provided from the fully developed portion of the road to the sidewalk that goes over the bridge. That will be achieved by extending the sidewalk into the site, north of the Pagoda, and connecting it back to Linden Lane further north. This will provide much better pedestrian access to the Metro, bypassing part of the vehicular roadway and taking pedestrians within a short walk of the Metro.

The diagram below depicts the proposed improvements to Linden Lane.

Linden Lane Improvements, Ex. 55



Mr. Guckert opined, based on his review of the Development Plan, that the site will have excellent pedestrian and vehicular circulation. He noted that there is a redundancy in the road system, so cars will not have to backtrack to get into or out of the community. He also pointed out that the site is accessible via Linden Lane from major roadways to the north and south, providing really good regional circulation and safe, easy local access.

Mr. Guckert considers the planned improvements to Linden Lane to be a reasonable compromise between the Applicant and Technical Staff. He noted that north of the site, Linden Lane is a good, two-lane road that can handle the traffic – the area that needs help is along the main part of the site, where the improvements are planned.

Mr. Guckert opined that the proposed rezoning will not affect the surrounding area adversely from a transportation standpoint. Tr. at 248. He stated that the vehicular and pedestrian site access shown on the plans is safe and adequate, the roadways are adequate to accommodate the zoning change and proposed development, the internal circulation systems will be safe, adequate and efficient and the rezoning is the public interest from a transportation planning

perspective. He noted, in particular, that the proposed residential use is preferable to non-residential in terms of trip generation, and that the project will significantly improve a substandard roadway. Mr. Guckert emphasized that even with the additional trips the proposed development will generate, considering the improvements proposed for Linden Lane, the net effect on traffic conditions will be beneficial. Tr. at 250.

2. Water and Sewer

The subject property is served by public water and sewer from existing public rights-of-way and public utility services. These services will be available to the proposed development through extensions and relocations of the existing lines abutting the property.

3. Schools

The subject property is within the service areas of Woodlin Elementary School and Sligo Middle School. At the high school level, the site is in the base area for Albert Einstein High School, but students will be able to attend any of the five high schools in the Downcounty Consortium. Based on the preliminary unit mix, Montgomery County Public Schools ("MCPS") expects the proposed development to generate approximately 43 elementary, 22 middle and 23 high school students. See Ex. 39 at A-24. There was evidence to suggest that the new construction will tend to attract single or couples without school-age children, so these numbers may be somewhat high. See Tr, at 101-102.

MCPS reports that based on their program-based capacity calculations, enrollment at Woodlin Elementary School is projected to exceed capacity throughout the six-year forecast period by about 20 to 25 students. No additions are currently planned. Sligo Middle and Albert Einstein High School are projected to remain within capacity for the forecast period. The other high schools in the consortium are expected to be within capacity in the next few years and stay within capacity thereafter, although trends in student choices among the schools are just developing.

The school capacity test under the AGP finds capacity adequate in all clusters for purposes of subdivision review in FY 2005. The methodology behind the AGP capacity calculations, which differs from the methodology used by MCPS, represents the County Council's judgment as to an appropriate means to assess whether school capacity is adequate to support residential development.

K. Housing Policy

The Applicant argues that the proposed development will further county housing policy by providing a variety of housing types at varying price points, which will appeal to residents at diverse stages of life. Housing types include historic condominiums and apartments, unique, historic single-family homes, and new townhouses. Housing options will appeal to diverse residents including young service workers looking for affordable rental units, first-time home buyers looking for condominium units or townhouses, and empty-nesters trying to downsize without the multi-level living of townhouses.

A binding element of the proposed development guarantees at least 20 percent affordable units. In addition, the transitional housing facility will continue to provide a housing option for some of the County's most vulnerable residents.

L. Support for the Application

The present application has the support of a number of civic groups and governmental organizations. Save Our Seminary ("SOS"), the civic group that has spent many years searching for a new, economically viable use for the subject property, fully supports the present application and the Development Plan. Fred Gervasi, President of the organization, testified on behalf of SOS as well as his neighborhood, Forest Glen Park, and other neighborhood associations that are represented on the Seminary Advisory Board. He testified that community support for the proposed rezoning and development is very broad and very deep, largely due to the compatibility of the project with the neighborhood.

Mr. Gervasi stated that people in the neighborhood were favorably impressed with the proposed development from the first presentation The Alexander Company made. The neighbors found that even the new townhouses would be very compatible because of all the design details that echo elements found in the neighborhood.

Mr. Gervasi observed that he has been working for years to convince people that the Seminary should *and could* be saved, and the Applicant was the first developer who believed that the historic fabric could be saved. He noted that the improvements planned for the sidewalks and the interpretative trail would create more opportunities for public access to the site than are available now. SOS has been providing monthly site tours for six years and plans to continue doing so. Mr. Gervasi suggested that this will fulfill the requirements of the Maryland Historic Trust easement in a way that will not be threatening or difficult for the new residents.

Finally, Mr. Gervasi noted that community very much supports the transitional housing, which has been in the neighborhood for 20 years, and stated that the Applicant came up with a very good response to that need – a centrally located space in a historic building, well suited for the use.

The Forest Glen Park Citizens Association also wrote separately in support of the rezoning. See Ex. 42.

The Montgomery County Historic Preservation Commission (“HPC”) supports the application because the rezoning is necessary to allow enough new residential construction to finance rehabilitation of the historic buildings, and the proposed development is sensitive to the historic context, the environment and the adjacent neighborhood. See Ex. 36(a). The HPC recommended, in a letter to Planning Board Chairman Derick Berlage, that the Planning Board support the Applicant’s desire to minimize the widening of Linden Lane, and encouraged fast-tracking of the project due to the rapidly deteriorating buildings.

Lisa Rother, Planning Manager for The Office of the County Executive, wrote a letter in support of the application. See Ex. 43. Ms Rother notes that the County Executive chose the Alexander Company and Eakin because their proposal was in keeping with the County’s public

policy goals, and their experience with similar projects was unique. The letter states that since their selection, the development team has worked diligently on this complicated project. Executive Branch Staff find that the present application complies with the requirements of the PD Zone and the Master Plan, satisfies the findings necessary for a development plan, and proposes a compatible form of development.

Ms. Rother reports that the Department of Health and Human Services supports the project because of the commitment to relocate Carroll House on site. She also notes that the Executive Branch, specifically the Department of Public Works and Transportation, is keenly aware of existing circulation and cut-through traffic problems, has taken some steps to alleviate those problems, and will continue to work with the community and, as necessary, the developer of the Seminary property to address those concerns.

The Applicant expressed appreciation for the tremendous community involvement in the preservation of this site, and particularly the years of effort by Save Our Seminary and the County to stop the Army from tearing the buildings down, get control over the property and come up with redevelopment criteria. Ms. Bock, from the Alexander Company, described the Development Plan as putting into reality what was originally conceived of at the county and neighborhood level.

M. Opposition

The record contains one letter of opposition. The writer, Peter Andresen, appeared at the hearing but declined to testify. Instead, he requested leave to submit a letter of opposition after the hearing. With the agreement of Applicant's counsel, Mr. Andresen was permitted two days after the hearing to submit his letter.⁹

⁹ Mr. Andresen's letter arrived by fax, accompanied by letters from two other individuals who did not appear at the hearing. Mr. Andresen was given leave to submit a letter after the hearing because he made a specific request to do so. The record was not held open for general comments. The record was open for several months before the hearing, and other parties had the opportunity to submit comments during that time. Forcing the Applicant to respond to new arguments in writing, after the hearing, without the benefit of witnesses or cross-examination, would not be consistent with standard administrative practice or substantial fairness. Accordingly, the two additional letters were excluded from the evidentiary record.

Mr. Andresen opposes the proposes rezoning because there has been no determination of a mistake in the Master Plan, nor has there been a change in the character of the neighborhood. See Ex. 63. Mr. Andresen appears to confuse the “change or mistake” rule, which pertains to Euclidean zoning cases, with the requirements applicable in the present case, where the Applicant seeks reclassification to a floating zone. Rezoning to a floating zone requires a demonstration of compliance with the zone, compatibility and the public interest, but there is no change or mistake element.

Mr. Andresen further contends that the proposed development does not comply with the Master Plan, and that a minor master plan amendment should be required before allowing a change from the existing R-90 zoning. Finally, Mr. Andresen states that the Applicant has not established that the property cannot be developed under the current R-90 zoning.

Mr. Andresen offers no argument, legal or factual, to support his contentions, nor did he make himself available for cross-examination, although he was present at the hearing. The substantial, probative evidence of master plan compliance presented by the Applicant cannot be outweighed by such unsupported allegations. Moreover, an applicant is not required to make a showing that a property is not developable under its existing zoning classification in order to request a reclassification. The focus is on whether the zone requested is appropriate, not whether the existing zone would do.

III. SUMMARY OF TESTIMONY

The most striking thing about the testimony in this case was that nearly every witness on the development team either began or ended with a heartfelt statement of his or her pleasure to be working on such an exceptional and worthy project, and to be part of a team with so much talent and expertise. The substance of the testimony is summarized below.

A. Applicant's Case in Chief

1. Natalie Bock, The Alexander Company

Ms. Bock has been a development project manager at the Alexander Company for nine years, and has been involved in the commercial real estate industry for about 20 years. Her role is at the front end of transactions, including property acquisition, creation of the development plan, assessing economic feasibility and securing land use approvals. Ms. Bock testified that the Alexander Company specializes in the adaptive reuse of historic structures. The company normally works in the central United States and this is its first project this far east, so they are very pleased to have partnered with Eakin Youngentob, which has expertise in in-fill development and new construction in the metropolitan D.C. area.

Ms. Bock noted described briefly the transfer of title to the property and the historic preservation easement. Her role has included working with the development team to make sure the zoning requested will accommodate the proposed development plan. She noted that the Applicant seeks the PD-15 Zone because it provides the flexibility to accommodate a wide variety of housing options, as well as large open spaces and amenities. The PD Zone will allow the Applicant to develop the site in a unique manner that would not be possible under a traditional zone. The planned development would have a variety of structures with different heights and architectural features. It would provide a wide range of housing types, including housing for individuals transitioning from homelessness, rental housing for people with 50 and 60 percent of the area median income, small condominium units at affordable prices, and more expensive units including new construction ownership housing. The plan takes advantage of the site's green space and architectural amenities to provide a superior housing environment for residents. The Applicant expects this plan to create a development that is both compatible and integrated with the surrounding area.

Ms. Bock described the history of her company's involvement with the subject property. The Alexander Company first saw the site in May 2003, when it responded to a request

for proposals from Montgomery County. Montgomery County learned of The Alexander Company when they asked the National Trust for Historic Preservation for names of development companies that specialize in adaptive reuse. The Alexander Company sought to construct a plan that would meet the County's goals in its request for proposals, while at the same time creating the economic conditions that would make adaptive reuse of the historic structures feasible. They crafted a fairly complex scheme to finance the adaptive reuse of the historic structures, which relies heavily on the sale of new construction. Other important elements are county affordable housing programs, federal and state funding for environmental remediation and state and federal historic tax credits.

Ms. Bock noted that the Seminary buildings are in poor condition, but no worse than other buildings the Alexander Company has seen. She expressed confidence that they will be able to renovate the buildings, provided that they receive the tax credits they anticipate and are able to build and sell the new housing. Their goal is taking buildings that have outlived their useful life and returning them to a usable state. To qualify for Federal tax credits they have to satisfy rigorous National Park Service rehabilitation standards; Ms. Bock testified that the Alexander Company has been successful in every one of the 100 to 150 applications it has submitted to the Park Service. The standards require them to select an appropriate time period for the structure and keep the exteriors consistent with that time period. On this site, in some cases that will require removing utilitarian additions made by the Army, or restoring architectural details that the Army removed. On the inside, they try to achieve a building that is respectful of the historic fabric, but gives residents the experience of living in a new building, with new electric and plumbing. Tr. at 258.

Ms. Bock provided a brief history of the National Park Seminary, and observed that the historic buildings have deteriorated rapidly over the last ten years. The Army failed to adequately secure the site, and there were burst steam pipes and water pipes causing extensive damage. In some places, there was water running freely through buildings.

Ms. Bock reviewed the basic elements of the redevelopment plan, including 280 units of housing, 98 of which would be new construction; preservation of the historic Glen and

stream valley; making the ballroom open to the public for community events; providing a new site for the Carroll House transitional housing facility that is currently located on site; and providing direct access to Rock Creek Park for residents and the community at large. Ms. Bock noted that Phase I would include almost all of the units. The second phase would consist of just the villa site and the castle (Note: Phase 2 also includes eight new townhouses). These structures present exceptional challenges because of their location on the far side of the stream valley, which increases the cost of making utility connections, and their proximity to the Beltway and the nearby CSX train line. The Applicant plans to develop the lower portion of the site first, then work through the more difficult issues over time as a second phase.

Ms. Bock stated that the main building will house the transitional housing use, mixed income rental units, condominium units, an exercise and fitness facility for the entire 280 units, and the 10,000-square-foot ballroom. The transitional housing use will have its own entrance and its own outdoor space. Ms. Bock noted that the transitional housing is a county facility, which is run under contract by Catholic Charities, to help men transition from homelessness to permanent housing. The Applicant plans to sign a long lease with the County, on the order of 99 years, to provide for this use.

Ms. Bock explained that ancillary buildings such as the servants' quarters, the power house and the gymnasium will be developed with condominium units. The sorority houses and other single-family residences will be sold as single-family homes. She noted that a series of protections are in place for the historic structures. The most pervasive is the historic preservation easement held by the Maryland Historic Trust, which has four main components: (1) any modifications to the existing historically significant structures, including some historically significant interior spaces, must be approved by the Trust; (2) the exteriors of any new construction on the 32-acre site must be approved by the Trust; (3) the Applicant is required to maintain the buildings in good condition; and (4) specified portions of the site including the ballroom, the primary hallways, several entrance ways and the dining room, as well as historically significant outdoor spaces, must

be open to the public for at least 35 hours per year. Tr. at 56. Ms. Bock described this as a strict easement, but one that is appropriate to the significance of the site. She opined that the easement provides the long-term protection that was intended by the Master Plan. Tr. at 60.

Ms. Bock stated that the National Register of Historic Places, Montgomery County's listing of historic places and the Master Plan have designated as a historic district the entire site north of Linden Lane, plus several historic structures on Woodstock Court at the west end of the site. Tr. at 58. The Montgomery County Historic Preservation Commission ("HPC") has the right to review any changes to structures within the historic district. In addition, because the Applicant plans to apply for federal historic preservation tax credits, the National Park Service will review all the work they do to historic structures, as well as the exteriors of new construction.

Ms. Bock testified that the Applicant has been working closely with the Maryland Historic Trust and the HPC and has obtained preliminary approvals from both organizations for the plans submitted in connection with this application.

Ms. Bock addressed the public benefits of the proposed project, primary among them the opportunity to preserve and put to new use some of the most unique and interesting combinations of architecture in the entire country. Tr. at 45-46. She made reference to the years of effort by Save Our Seminary and the County to stop the Army from tearing the buildings down, get control over the property and come up with a set of criteria for the redevelopment, and described the present development plan as putting into reality what was originally conceived of at the county and neighborhood level. Tr. at 65-66.

The affordable and transitional housing provides another, significant public benefit. Ms. Bock testified that in the documentation that carried out the Applicant's acquisition of the subject property from the County, the Applicant obligated itself to provide a minimum of 20 percent of the total units at prices that will be affordable to people whose income is at or below 60 percent of the area median income. Those units will be provided in the main building. For the transitional housing, the Applicant's agreement with the County is to provide a long-term lease, say 75 or 99

years, which will require the County to pay expenses for the transitional housing site, such as utilities, insurance, repairs and maintenance, but no rent.

Ms. Bock described great community participation in this transaction, noting that Save Our Seminary was involved in putting together the County's request for proposals and selecting the development team, and is now helping to construct and implement the Development Plan. The Applicant meets regularly with the Seminary Advisory Board, a citizens' organization with representatives from each of the major neighborhoods and from SOS, and plans to continue doing so throughout the construction phase and beyond, when the site is being run as, in many ways, a public access site. Ms. Bock noted that the Maryland Historic Trust will also participate throughout the process by approving all of the building and renovation plans, lighting plans, landscaping, etc.

Ms. Bock stated that if the present application is approved, the project will proceed to preliminary plan and site plan review. The Applicant hopes to begin construction during 2005 so that the site can open some time next year.

2. David Voss, The Alexander Company

Mr. Voss described the deteriorated condition of the buildings. He presented several photographs showing severe interior damage. For example, one area in the gymnasium building is growing stalagmites and stalactites due to water dripping down through the roof and freezing on the way down. The senior house had a leaking sink that ran for a long period of time, because the water supply was a looped system with many different sources and it took months of effort on the Applicant's part to finally shut off the water to the sink. In the meantime, the floor started to collapse from water damage. Then a tree collapsed onto the roof, creating a hole in the roof and letting in more water. In addition, broken water pipes were leaking and freezing inside the building. That whole area has almost completely collapsed in the last year. The basement is now in the sub-basement, the first floor is in the basement, the second floor is partially on the first floor and the third floor is sagging by three or four feet.

Mr. Voss described severe damage in the villa building, which had an area with a flat roof that leaked for years. That resulted in deterioration of supporting elements of the structure, and that area also is collapsing. The eastern portion of the villa, under the flat roof, will need to be torn down. Mr. Voss noted that at this point, this is the only historically significant structure that the Applicant knows will need to be demolished. In the main building, the Applicant has identified some 30 to 40 roof leaks, with walls starting to separate from the building and some floor collapses.

Mr. Voss stated that the Applicant has been patching the buildings to slow down the deterioration, but the temporary fixes will not last long. It will cost millions of dollars to truly save the buildings.

Mr. Voss testified that when he first walked through the existing buildings, many were in good shape, so much so that his company planned to set up a field office for the architects and construction managers in one of the buildings. In recent months, he discovered that all of the buildings have experienced damage that was not there a year ago. Every one has roof leaks, plaster damage and dry rot. Mr. Voss acknowledged that this site will be a very challenging project. They are racing against the clock to be able to restore the buildings while preserving enough of the historic fabric for each building to qualify for historic tax credits.

Mr. Voss stated that in addition to damage from the elements, the buildings have been victims of vandalism by “urban explorers.” In researching the buildings, Mr. Voss did an Internet search on “National Park Seminary,” and came across a group of ghost hunters who took pictures of themselves going through the buildings with crowbars. He also found an urban explorer website that provided instructions on how to break into the Seminary buildings. This sort of activity creates a risk of someone getting injured, or of someone setting a fire, like the fire that destroyed the Odeon Theater.

3. Matthew Birenbaum, Eakin Youngentob Associates.

Mr. Birenbaum is senior vice president with Eakin as has been in the real estate development industry for about 15 years. He expressed how pleased his company is to be working

with the Alexander Company on this project, noting that Eakin initially responded independently to the request for proposals, but did not make the short list because of a lack of experience in historic preservation. They later submitted the successful proposal jointly with The Alexander Company. Together, the two companies have a combination of local knowledge, expertise in new construction and expertise in historic preservation. Mr. Birenbaum stated that Eakin specializes in in-fill, for-sale housing in the Washington metropolitan area, and has done a lot of work in Montgomery County. Eakin prides itself on designing new construction that is “sympathetic” to the architecture of the surrounding neighborhood.

Mr. Birenbaum stated that Eakin thinks of the project in two parts: the area north of Linden Lane, which the County has designated as a historic district, and the area south of Linden Lane, which is currently undeveloped.

In the historic district, Eakin has looked to the Seminary buildings as the inspiration for the in-fill architecture. They decided to pick up on two of the styles that are represented among the Seminary buildings, the southwest mission style seen in the power house and the servants’ quarters, and the Tudor or Elizabethan style of the main building. Using each of those styles, Eakin has created conceptual plans for three- and four-story buildings that will contain individual townhouses, 18 feet wide, but are designed to have the appearance of a single large building. The buildings will have either three stories with an English basement or four stories. All will have garages in the rear, and many will have roof decks. New construction within the historic district is planned both for sites that are presently vacant, and for sites that currently have structures lacking historic value, which will be torn down. Tr. at 40-41.

Mr. Birenbaum noted that only two structures currently exist in the portion of the subject property south of Linden Lane. The plan calls for one of these, a frame house, to be relocated on-site. The other building, which Mr. Birenbaum described as a cross between a house and a shack, will be demolished. South of Linden Lane, Eakin has looked to the surrounding residential neighborhood for architectural inspiration. This led them to design a “courtyard home”

and a townhouse product, both of which reflect the bungalow, front porch-style architecture common in the neighborhood. The courtyard home design is 32 feet wide, with two stories and a two-car garage accessed from a rear alley. The front façade has two planes, with a forward projection that has a gable, and a rear portion that has the front door, creating an entry courtyard off the street. Mr. Birenbaum stated that for someone walking or driving down the street, the courtyard homes feel more like detached houses than attached.

The other townhouse design is 24 feet wide, also with two-car garages. The site plan shows townhouses ringing the perimeter of the area south of Linden Lane, backing up onto park land and Walter Reed. All of the garages in this neighborhood will have vehicular access from rear alleys rather than the streets.

New construction during the second phase would consist of eight front-loaded townhouses, to be located in a cluster on the access road that leads to the villa. These would have one-car garages and would back up to the Glen.

Mr. Birenbaum observed that Eakin's product types are geared to different segments of the market. One is empty-nesters, usually from the neighborhood, who want to sell their single-family home after the children have moved out, and move to a community where the homeowner's association takes care of maintenance. The courtyard home is particularly designed for that demographic because it is a two-story home, sometimes with a master bedroom on the ground floor. The other core market segment these products attract is working professionals, singles and couples. They tend to be younger, and gravitate more toward the multi-level living of townhouses. Tr. at 101-102.

Mr. Birenbaum noted that the entire property is planned to be include in a single homeowners' association ("HOA"), with all lots subject to restrictive covenants. The HOA will maintain the exterior common areas, plow the streets, cut the grass, and maintain the landscaping and exterior amenities. It will also have an architectural review board, providing an extra layer of review for changes a homeowner might propose. Each of the residence types – fee simple owners,

condominium owners and renters – will be represented on the HOA board. In addition, each condominium will have its own association that will own the common elements of that building.

Mr. Birenbaum noted that the main building will contain transitional housing, mixed income rental housing including “affordable” units, and somewhat larger condominium units that will not be classified as “affordable.” The recreational amenities located in the main building, such as the fitness center and community space, will be maintained by the owner of the rental portion of the building, with financial contributions from all residents of the development. The ballroom will be a condominium unit owned by a separate entity, which will contract with a third-party management entity to manage the use of the ballroom and fees for operating expenses.

Mr. Birenbaum mentioned planned site amenities including a historic interpretive trail, which will connect the parkland south of the subject property with the historic district and the Glen, and a series of natural areas with historic statuary, seating and picnic areas.

Mr. Birenbaum stated that Linden Lane in the vicinity of the subject property is 18 to 20 feet wide, with no curb and gutter, and power poles directly behind the edge of paving. It is not considered safe under county standards. The Applicant wants to improve the safety of Linden Lane while preserving as much as possible its historic character, so it continues to feel like a country lane, with a narrow width that minimizes cut-through traffic and reduces speeding. Planned improvements to the roadway include sidewalks on both sides through the main part of the site, and a sidewalk in the northwest corner that will connect to the bridge across the Beltway.

Mr. Birenbaum noted that the binding elements limit the number of dwelling units to 280, require a conservation easement to be placed on the Glen, and provide for construction of the historic interpretive trail. In addition, the Applicant has made a number of commitments to the County in various documents, including an offer to purchase between the County, the General Services Administration and the Applicant, as well as a purchase and sale agreement between the County and the Applicant that includes certain covenants which survive the transfer of the property. These documents create continuing legal obligations between the Applicant and the County,

including the Applicant's commitments to provide space for transitional housing, and 20 percent affordable units.

4. William Landfair, land planner

Mr. Landfair was designated an expert in land planning. He first described the subject property, noting that the acreage for which rezoning is requested is 31.79 acres, two-tenths of an acre less than what was shown on the original submissions. This change was necessitated by changes made in the exact acreage that the federal government conveyed.

Mr. Landfair described the historic district, which is mostly north of Linden Lane and contains about 27 acres. Mr. Landfair stated that there are 29 buildings in the historic district, 23 of which contribute to its historic significance, and all but one are currently vacant and in serious disrepair. He described the site topography, which varies from gently rolling upland hills to steep stream beds. About 13 acres of the site are forested, mostly located in the Glen. The Glen itself is mostly overgrown and very difficult to traverse.

Mr. Landfair described the surrounding area for this application, which coincides with a neighborhood identified in the Master Plan and in the Staff Report. He reviewed the Master Plan recommendations for the subject property, which include a suggestion that a minor master plan amendment might be useful if the property cannot be developed under its existing R-90 zoning. Mr. Landfair noted that the plan also provides guidelines to "serve as the basis for a minor master plan amendment, or for development, should it proceed without amendment." Tr. at 93, quoting Master Plan. Thus, Mr. Landfair observed, the Master Plan allows for the possibility of development proceeding without a minor master plan amendment, as long as it complies with the stated objectives, goals and guidelines. Tr. at 93-94. Mr. Landfair opined that a master plan amendment is not necessary in this case for three reasons: (1) the proposed development would satisfy all of the stated goals and objectives in the Master Plan, (2) the approval process will give the County Council an opportunity to assess all of the issues that would be raised in a minor master plan

amendment, and (3) the property continues to deteriorate, and it is imperative that adaptive reuse take place as soon as possible.

Mr. Landfair described the PD Zone and opined that the proposed development would satisfy its purposes and development standards. The Zoning Ordinance specifies that the PD Zone may be applied only to property that is recommended in a master plan for densities of two dwelling units per acre or higher; in this case, the subject property's recommended and actual zoning meet that requirement. Mr. Landfair stated that the proposed development satisfies the requirements of Section 59-C-7.122, which specifies that one of five criteria must be met before the PD Zone can be applied. He noted that the proposed development contains sufficient gross area to construct 50 or more dwelling units, and it would result in the preservation of a historic site, satisfying criteria (a) and (b).

Mr. Landfair briefly described the components of the development plan and opined that they will be compatible with the surrounding area. He stated that the housing types and densities proposed, their setbacks, their scale and their bulk are compatible with the surrounding area. In addition, landscaping and buffering will further ensure compatibility. Mr. Landfair noted that the only area of the subject property that is adjacent to a residential neighborhood is the western edge of the site, along Linden Lane. The rest of the property abuts or confronts I-495, the Walter Reed Medical Center complex, or park land.

Mr. Landfair stated that no opposition to the present application was presented to the Planning Board. The only concerns raised by community members related to cut-through traffic, excessive traffic speed and pedestrian safety. He noted that the Planning Board and even those who testified about these issues agreed that they are not necessarily the result of this application, but are existing issues that should be addressed by the County. He stated that the widening of Linden Lane provided for on the development plan, and the addition of sidewalks, curbs and gutters, will make it much safer and more pedestrian-friendly.

With regard to parking, Mr. Landfair noted that the requirement in the Zoning Ordinance is based on the number of bedrooms in each unit. The Applicant applied parking requirements to the transitional housing based on the requirements for charitable and non-profit uses. Based on the current unit breakdown, the development would be required to have 503 parking spaces. The development plan shows 535 spaces, not including an optional deck that would provide another 30 spaces. Parking in the historic district will be mostly in surface parking lots, with some parking in the basement of two historic buildings, and garages for the new townhouses. The Applicant will seek approval at site plan for a potential parking deck to provide additional parking.

Mr. Landfair summarized the conclusions in his written report concerning the proposed development's compliance with the purpose clause for the PD Zone. He opined that the flexibility of the PD Zone will allow the proposed development to implement the guidelines of the Master Plan, noting that the historic preservation and adaptive reuse planned in this project could not be achieved under the existing R-90 zoning. He stated that the variety of housing types will mix well with uses in the surrounding area, the preservation and adaptive reuse of historic structures will create a sense of place, and the development will have an improved street network with safe pedestrian linkages and amenities including public open spaces, nature trails, outdoor sitting areas and the Glen. He noted that forest conservation requirements will be satisfied, and that the flexibility of the PD Zone will allow several specimen trees to be saved. Mr. Landfair concluded that the development will increase housing diversity in the surrounding area while maintaining compatibility with existing housing types and densities.

Mr. Landfair also addressed the development standards of the PD Zone, and particularly the Applicant's waiver request. The Applicant seeks a waiver from setback and height standards that the PD Zone imposes on property that is adjacent to land classified under a single-family residential zone. As shown on a diagram submitted into the record (see Ex. 51), roughly 50 units that are not single-family detached dwellings, comprising about half of the proposed new units

south of Linden Lane and a fair number of units in the historic district, are planned for locations within 100 feet of adjoining property recommended for single-family zoning. These structures also violate the related height limitation. Mr. Landfair testified that denial of the waiver would have a tremendous impact on the project, and could prevent it from going forward.

Mr. Landfair noted that a zoning text amendment was adopted at the Applicant's request, a few months before the hearing in this case, which permits the setback requirement to be waived for structures within or in close proximity to a historic district, where reduced setbacks will facilitate the preservation of structures in the historic district and will not have an adverse impact on adjoining properties. Mr. Landfair emphasized that virtually all of the affected buildings abut land that is zoned for residential use, but is either parkland or part of the Walter Reed Annex. Only a handful of units that exceed the setback and height standards will be in close proximity to single-family homes, and the homes they are close to are part of the proposed development.

Mr. Landfair noted that the Applicant is requesting PD-15 zoning, although the proposed density is far lower than 15 dwelling units per acre, because PD -15 permits buildings with a height greater than four stories. One wing of the main historic building is six stories in height, so the height limitation of the PD-15 classification is needed.

Mr. Landfair opined that the present application is in the public interest. He noted that the project will use adaptive re-use to preserve a historic district and the majority of its historic structures; the application is in conformance with the Master Plan; it furthers county housing policy by providing for affordable housing; it will have no adverse impacts on existing and planned public service facilities; and it does not conflict with any other county plans or policies. Tr. at 124-27. He also opined that the application satisfies all the of the development plan findings set forth in § 59-D-1.61. Tr. at 127.

At the Hearing Examiner's request, Mr. Landfair identified the locations on the site of three areas of concern identified by Environmental Planning Staff at the MNCPPC. One is the proposed location of a new parking lot, driveway and storm water management structure in the

area identified for an optional parking deck. Another is a possible bridge crossing over the Glen, which could be built as part of Phase Two to connect the villa and the castle with the rest of the site. Mr. Landfair indicated that there was a bridge in that location 100 years ago, but Technical Staff has raised concerns about reconstructing it. The third area of concern is a forest stand located in the southwest portion of the site, south of Linden Lane at the end of the new townhouses. Mr. Landfair indicated that there is room, as Staff suggested, to make adjustments to building footprints, the location of impervious surfaces, etc. to try and ameliorate some of the environmental impacts. He stated that the Applicant has been trying to do that while completing the site plan.

5. Charles A. Irish, Jr., engineer

Mr. Irish was designated an expert in civil engineering and site planning. Mr. Irish testified that he and his firm prepared a civil engineering report for the present application, as well as a natural resources inventory/forest stand delineation, a preliminary forest conservation plan and a storm water management concept plan. Tr. at 171-72.

Mr. Irish testified that the site is currently served by water, sewer, gas and electric from existing public rights-of-way and public utility services. These services will be available to the proposed development through extensions and relocations of the existing lines.

With regard to storm water management, Mr. Irish stated that the site naturally drains in two primary directions. The area south of Linden Lane drains toward the park property at the southwest corner of the site, and everything north of Linden Lane drains to the Glen. The Applicant plans to maintain these natural drainage patterns while adding modern storm water management facilities. The existing drainage system has under-sized pipes and erosion at some of the outfalls, so the majority of the system will be replaced. Mr. Irish stated that the amount of impervious area on the site will increase, under the proposed plan, from about 9.5 acres to about 13.7 acres. However, the new storm water management system will provide quality control and channel protection (quantity) control that will improve the quality of run-off, decrease the quantity of run-off and make some stream channel improvements.

Mr. Irish noted that the storm water concept plan was filed with DPS on November 17, and in keeping with the green tape process it is already under review. The Applicant and DPS are working towards creative solutions that will keep the design from intruding into the Glen or damaging trees that need to be preserved.

Mr. Irish testified that sediment control measures will be fully designed during the construction document phase. They are expected to include sediment traps, silt fences, diversion dikes, construction entrances, truck wash areas and other elements designed to protect the stream valley and adjacent properties from erosion and siltation during construction.

With regard to protecting the stream valley buffer, Mr. Irish stated that the existing development encroaches on some areas that are now considered part of the buffer. The proposed development would actually pull the existing development slightly away from its existing encroachments into the stream valley buffer, although it might add minor encroachments in other areas. One of these is the optional parking garage proposed in the northwest corner of the site. Mr. Irish testified that if that garage is approved, it will be done in an environmentally sensitive manner, so storm water run-off will not just sheet flow down the slope, but will be captured and filtered. Mr. Irish suggested that a parking structure at that location could have benefits from a storm water management perspective, by catching water that otherwise might run down the slope.

Mr. Irish also addressed another concern raised by Technical Staff – the potential bridge connecting the main portion of the site with the villa and the castle. He noted that the original design of the site included a bridge at that location, and stated that if a new bridge is built, it will be done in an environmentally sensitive manner. He suggested that it would be approached like a utility outfall, with some intrusion into the stream valley during construction, but much of it restored or stabilized at the end of the construction process. Mr. Irish conceded that the villa and the castle can be reached via Smith Road, but stated that it is a narrow road, and the Applicant would prefer multiple means of access. Moreover, a bridge could also serve as a utility corridor.

Utilities might be placed within the same footprint that is disturbed for construction of the bridge, rather than running them out Smith Road.

The third Technical Staff concern that Mr. Irish discussed is the trail head in the southern portion of the site. The Applicant is working with Technical Staff to decide how to accomplish storm water management without adverse impacts on significant trees. Tr. at 180.

With regard to forest conservation, Mr. Irish stated that there are two primary forest stands: one on the north side of the property comprised of approximately 12 acres, most of which are in the Glen, and a small forest stand south of Linden Lane that measures roughly half an acre. He noted that the NRI/FSD was prepared based on the acreage included in the original LMA application, so it covers not only the area now proposed for rezoning, but an additional 0.2 acres of land adjacent to Smith Road where the salt dome and warehouse are located. The latest forest conservation plan is based on the same graphic as the NRI/FSD, but the tabulation of forest removal and retention is based only on the area included in the present rezoning. Mr. Irish stated that the proposed forest conservation area shows the retention of approximately 9.2 acres of forest, which exceeds the amount required. Accordingly, no afforestation or reforestation would be required, nor is the Applicant seeking credit for proposed landscaping to satisfy forest retention requirements. In addition, Mr. Irish noted that the amount stated for forest retention excludes forested areas that will be temporarily disturbed for the installation of utilities, primarily sanitary sewer and storm water facilities, and will be allowed to revert to forest after construction is complete.

Mr. Irish explained in detail the proposed improvements to Linden Lane, which he described as beneficial to the neighborhood. He also opined that public utilities will be adequate to serve the proposed development; the storm water management system will be adequate and will improve the quality of the stream and stream valley buffers; the proposed rezoning will have no adverse impact on the surrounding area from the standpoint of storm drainage, storm water management and sediment control; and the proposed design tends to prevent erosion of the soil

and preserve natural vegetation by keeping buildings off of the slopes, out of the stream buffers to the extent feasible, and concentrated in clusters to preserve open space.

6. Trini Rodriguez, landscape architect/planner

Ms. Rodriguez was designated an expert in landscape architecture and land planning. She testified that her firm prepared a landscape plan, an amenities plan and a pedestrian circulation plan for the proposed development, and they reviewed the development plan.

Ms. Rodriguez highlighted certain features of the site, especially as they related to open space. She observed that roughly in the middle of the site there is a knoll that is bisected by Linden Lane. The land falls gently from there to the north and south, and gets steeper as it goes into the valleys. She noted that other witnesses had discussed the Glen, but there are also smaller areas associated with the complex of buildings, such as courtyards, the fountain area, and smaller landscape elements and spaces that are defined by the buildings. Ms. Rodriguez described walking through the woods on this site as a treasure hunt, where you come across walks, steps, stone walls, bridges and whimsical elements. The Applicant plans to enhance the existing trails and reinstate some of the historic trails that are not in good condition.

Ms. Rodriguez noted that the impact on the Glen will be minimal, just what is necessary to improve roadways and utilities. She stated that one of the benefits of the redevelopment will be removing invasive species that have been quite damaging to the forest. Ms. Rodriguez noted that a conservation easement will be placed over the Glen, and supplemental plantings that will be needed along some of the edges of the forest will be done with native species. She observed that plantings in the historic core of the site will not be limited to native species, because photographs show that the original landscaping often used exotic species.

Ms. Rodriguez reviewed a conceptual plan of the proposed on-site amenities (Ex. 56). These include an interpretive trail that would connect to the Rock Creek Park trail at the southwest corner of the site, then move north through the spine of the site into the Glen. The trail layout was designed, with the help of Save Our Seminary, to facilitate both self-guided and formal

tours. Because space is tight in some locations, there are places in the historic portion of the site, such as going through an archway, where the pedestrian trail will have to share the same space with the automotive roadway. The Applicant plans to distinguish the pedestrian trail with special paving to set it apart from the road area intended for cars. Tr. at 205.

Other amenities include the ballroom, which Ms. Rodriguez described as a fabulous space; an Italian fountain in front of the main building; courtyards that the Army paved over, which will be restored as green areas; meandering walks within the site; and seating areas in the woods.

Ms. Rodriguez presented a concept pedestrian circulation plan (Ex. 58) that shows a network of sidewalks, the interpretive trail and the trail head connection. She opined that the plan shows a high level of pedestrian connectivity, both with the site and between the site and the surrounding area. Tr. at 208.

Ms. Rodriguez also presented a conceptual “site features” diagram (Ex. 59) that provides an indication of where the many historic statuary, stone benches, urns and planters might be located after restoration, distributed throughout the site.

Ms. Rodriguez opined that the present application would satisfy the requirements of the PD Zone, including its purpose clause, as well as the Master Plan. She noted a number of elements: the proposed development will maintain and restore historic district integrity; limit impacts on environmentally sensitive areas; improve storm water management and thereby reduce erosion; provide public access to the ballroom, the Glen and the interpretive trail; improve Linden Lane, thereby minimizing traffic impacts; keep light and noise to a minimum; create a “sense of place” that encourages social and community interaction; provide a mix of housing types including unique units in the restored buildings, plus new housing that will be very compatible with its surroundings; preserve significant open space that is well integrated with the uses; and provide an extensive pedestrian circulation network.

Ms. Rodriguez emphasized that the potential to restore this unique site and preserve its historic legacy can only be achieved under the flexibility of the PD Zone. She further opined that

the scale, the massing, the connectivity and the character of the proposed development make it extremely compatible with the surroundings. She noted that in its present dilapidated state, vulnerable to vandals, the site is a threat to the community. The proposed restoration will make it an asset. Finally, Ms. Rodriguez stated that the proposed development will serve the public interest by restoring a site that is an asset to not only the County, but the Nation. Tr. at 216.

7. Jack F. McLaurin, architect

Mr. McLaurin was designated an expert in architecture. He serves as an architect for the new construction component of the project. He described the process his firm undertakes in a project like this, which is to go into the surrounding area and understand the context, including the height and mass of the buildings, types of uses, densities, architectural styles and building materials. They look at elements that seem small, but mean a lot to the community, such as the locations of garages, streetscape designs, depths of front yards, fences, and sidewalk design. All of these elements factor into their land plan design and the design of the units themselves.

Mr. McLaurin discussed the two unit types proposed for the new construction, the town house and the courtyard home. He stated that the courtyard home is different from a conventional town house because it is extra wide, at 32 feet, and has only two stories. As a result, it lives and feels more like a single-family home that happens to be attached to other homes than like a town house. Mr. McLaurin stated that they focused on low-rise housing south of Linden Lane, where the surrounding area has single-family homes of various sizes, many of which are smaller bungalows and cape cods. They saw many front porches in the area, so they incorporated that into some of the designs. They incorporated the colonial building materials of the cape cods, mainly siding and brick veneer. They placed the garages in the rear of the units, accessed from alleys, to provide an attractive streetscape and promote pedestrian activity.

With regard to architectural styles on the historic portion of the site, Mr. McLaurin stated that the team felt the Tudor and Mission styles were the best ones to work with to develop

marketable new housing. He noted that one of their tasks was to develop unit sizes whose sale will generate the money needed to subsidize the adaptive reuse of the historic structures.

Mr. McLaurin observed that topography plays a big role in the design of specific units at various locations. The land use plan was designed to take advantage of the topography and minimize grading by using English basements in about half of the units.

With regard to the requested waiver from setback and height standards of the PD Zone, Mr. McLaurin testified that none of the new construction would be greater than 50 feet in height. He confirmed earlier testimony that the waiver is needed to allow enough units on site to support the adaptive reuse, and emphasized that the site plan has been designed to assure compatibility with the historic structures as well as the surrounding area.

Finally, Mr. McLaurin reviewed elevation drawings showing what each of the design types would look like, and explained how the various design elements work together.

8. Wes Guckert, transportation planner

Mr. Guckert was designated an expert in transportation planning and traffic engineering. He testified that his firm prepared the transportation analysis submitted as part of the present application based on the standard LATR analysis. At Technical Staff's request, this included a traffic signal warrant evaluation for the intersection of Linden Lane and Brookville Lane. Their study concluded that the nearby intersections identified by Technical Staff operate will within the applicable congestion standard and will continue to do so with the proposed development.

The traffic study also concluded that all of the relevant intersections will operate at a level of service ("LOS") of C or better in both the morning and evening peak hours. Mr. Guckert explained during his testimony how LOS measures congestion.

Mr. Guckert's firm found that a traffic signal is warranted at Linden and Brookville Lanes, even without the development of this project. They concluded that current conditions also warrant traffic calming measures, as suggested by the community, but not as a result of the proposed project.

Mr. Guckert testified that based on his review of the Development Plan, the site will have excellent pedestrian and vehicular circulation and provide improved access to Metro. He noted that there is a redundancy in the road system, so that cars will not have to backtrack to get into or out of the community. He also pointed out one feature that is not shown on the Land Use Plan, namely that access is available to the north, via Linden Lane, by crossing over the Beltway. Crossing over the Beltway and railroad tracks, a vehicle arrives at the intersection of Seminary and Linden Lanes, then further east reaches the Metro and Georgia Avenue. To the south and east, Mr. Guckert noted that Linden Lane again leads to Seminary Lane and then Georgia Avenue. Thus, a loop system allows vehicles on Georgia Avenue to enter the site from the north or south side of the Beltway, providing really good regional circulation and safe, easy local access. Based on Technical Staff's long range planning, Mr. Guckert estimates that about 30 percent of traffic from the subject site will go to and from the north, in the direction of the Metro, and about 40 percent to and from the east, towards downtown Silver Spring.

Mr. Guckert stated that residential uses generally generate fewer trips than other types of uses. He stated that a 2,000-square-foot house typically generates about ten trips throughout the day, while an office building of the same size generates about four times that amount.

Mr. Guckert opined that the proposed rezoning will not affect the surrounding area adversely from a transportation standpoint. Tr. at 248. He stated that the vehicular and pedestrian site access shown on the plans is safe and adequate, the roadways are adequate to accommodate the zoning change and proposed development, the internal circulation systems will be safe, adequate and efficient and the rezoning is in the public interest from a transportation planning perspective. He noted, in particular, that the proposed residential use is preferable to non-residential in terms of trip generation, and that the project would significantly improve a substandard roadway. Mr. Guckert emphasized that even with the additional trips the proposed development will

generate, considering the improvements proposed for Linden Lane, the net effect on traffic conditions will be beneficial. Tr. at 250.

B. Technical Staff

Zoning Analyst Joel Gallihue, who prepared the Staff Report in this case, testified on behalf of the MNCPPC. In response to questions from the Hearing Examiner, Mr. Gallihue explained why the transitional units currently in the Carroll House facility were not included in calculating density, or in assessing traffic impacts. First, they do not qualify as dwelling units because they lack cooking facilities. Mr. Gallihue analyzed the transitional housing as a use, rather than a number of dwelling units. He identified the use as a group home, which is a residential use permitted in the PD Zone. Mr. Gallihue observed that this component of the proposed development would generate no new trips, because it is an existing use already operating on the site, and there is no plan to increase the number of residents served. Tr. at 135-36. Mr. Gallihue was informed by Transportation Planning Staff at the MNCPPC that based on the nature of the use, the fact that the residents don't drive and there are only about five staff members, the transitional housing can be expected to generate one or two peak hour vehicle trips. Tr. at 135.

With regard to green space and the proposed conservation easement, Mr. Gallihue noted that the stream valley buffer and the Maryland Historic Trust easement lock up the site pretty tightly as it exists today. If one of the existing historic structures ultimately is found to be too badly damaged to rehabilitate, the Applicant will be obligated to follow the development plan by locating the same kind of unit on that site. In addition, they will have to go through the architectural review required by the easement. As a result, there is not very much room for major changes from the current plans. Moreover, the historic designation for this site includes not just the buildings, but the setting – the historic context. As a result, even changes to the landscape will be reviewed by the Maryland Historic Trust and the County's HPC.

As an example of efforts to preserve the historic setting of the site, Mr. Gallihue stated that a neighborhood resident suggested adding a tot lot or small playground, and Staff's

response was that even if there were room, it probably would not pass muster for the historic preservation reviewers.

With regard to the Master Plan's recommendation to have low traffic-generating uses at this site, Mr. Gallihue testified that during the preparation of the master plan there were discussions of various possible uses on the site, including a school or some kind of employment center. In general, a residential land use will tend to have more evenly distributed traffic generation than an office, institutional or commercial use, and will not generate the large numbers of trips that an employment center can create.

Mr. Gallihue expanded on the basis for the compatibility finding provided in the Staff Report. He sees the goals and objectives set forth for the subject property in the Master Plan as compatibility guidelines. Accordingly, in his view, satisfying the Master Plan guidelines demonstrates compatibility. Mr. Gallihue went on to describe the surrounding area as somewhat eclectic. In addition to the residential uses, there are institutional uses and some that are industrial in nature, like the salt storage facilities adjacent to the eastern boundary of the site. Mr. Gallihue opined that by proposing a completely residential, medium-density development that reuses existing structures without changing the property, the Applicant has demonstrated compatibility. He further testified that the site plan displays internal compatibility. A proposal to redevelop the site under the PD Zone could have been very different with regard to the new buildings and uses. The Applicant's approach will create a development that makes sense, rather than having some jarring combination of uses on the site.

Finally, Mr. Gallihue observed that because this project was given "green tape" processing at the MNCPPC to expedite the process, a lot of review that normally would not begin until after a decision at the zoning level has been under way for some time. As a result, some issues that normally would not arise until preliminary plan or site plan were discussed in the Staff Report and before the Planning Board. Some of those issues are addressed in binding elements

on the Development Plan, but many of them are better left for detailed consideration during preliminary plan and site plan review.

C. Community Participation

1. Frederick Gervasi, Save Our Seminary

Mr. Gervasi spoke on behalf of Save Our Seminary (“SOS”) and several neighborhood associations. His testimony is summarized in Part II.L. above.

2. Wayne Goldstein

Mr. Goldstein read into the record testimony that he provided to the District Council in September 2004 concerning a zoning text amendment (“ZTA”) that facilitated the redevelopment of a historic district such as the present case.

Mr. Goldstein described the National Park Seminary as the most unique historic resource in Montgomery County, and noted that its restoration will be enormously expensive due to “willful demolition by neglect” by the Army. Tr. at 10. He stated that the ZTA would allow for the building of new market-rate housing in and immediately adjacent to the historic district to help underwrite the historic restoration. The project would also include affordable housing, to take advantage of affordable housing tax credits, in addition to historic preservation tax credits.

Mr. Goldstein noted that the community surrounding the National Park Seminary has been included in the planning for its redevelopment for years, so the need for meaningful community involvement that is the greatest benefit of the master plan process has been more than satisfied.

3. Peter Andresen

Mr. Andresen appeared at the hearing and requested permission to submit written comments in opposition to the proposed rezoning after the hearing. The Hearing Examiner explained that written comments were accepted for several months prior to the hearing, and normally are not accepted after the hearing. However, because the record was being held open briefly for other reasons, the Hearing Examiner, with the consent of the Applicant’s counsel, gave

Mr. Andresen leave to submit a letter in opposition by the close of business on January 7, 2005.

Mr. Andresen's letter is discussed in Part II.M. above.

C. People's Counsel

The People's Counsel, Martin Klauber, gave a closing statement in which he emphasized the pivotal role in this endeavor of Save Our Seminary. He described the organization as the most sustained, involved, dedicated, responsive and responsible community association he has ever encountered in his long experience with Montgomery County land use.

Mr. Klauber concluded that the evidence demonstrates that the PD Zone is the appropriate zoning vehicle for this project, noting that it answers the community need and the Master Plan criteria for the site. Tr. at 270.

IV. ZONING ISSUES

Zoning involves two basic types of classifications: Euclidean zones and floating zones. The term "Euclidean" zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development such as permitted uses, lot sizes, setbacks, and building height. In the State of Maryland, a property owner seeking to reclassify his or her property from one Euclidean zone to another bears a heavy burden to prove either a change in circumstances or a mistake in the original zoning. See *Stratakis v. Beauchamp*, 268 Md. 643, 652-53 (1973).

A floating zone is a more flexible device that allows a legislative body to establish a district for a particular type of use, with land use regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed location is appropriate for the

zone, i.e., it satisfies the purpose clause for the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

PD (Planned Development) zones are a special variety of floating zone with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific specifications, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings. These specifications are set forth on a development plan to facilitate appropriate zoning oversight by the District Council. Pursuant to Code §59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone. Once it is approved, the development plan provides the design specifications for the site, much as the Zoning Ordinance provides design specifications for more rigidly applied zones. Accordingly, the evaluation of zoning issues must begin with the development plan and proceed to the requirements of the zone itself.

A. The Development Plan

Before approving a development plan, the District Council must make five specific findings set forth in Code § 59-D-1.61. These findings relate to consistency with the master plan and the requirements of the zone, compatibility with surrounding development, circulation and access, preservation of natural features, and perpetual maintenance of common areas. The required findings are set forth below in the order in which they appear in the Zoning Code, together with the grounds for the Hearing Examiner's conclusion that the evidence in this case supports each of the required findings.

- (a) ***That the zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies.***

The first sentence of the purpose clause for the PD Zone establishes consistency with the master plan as an important factor in applying the zone:

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional district and the area master plans by permitting unified development consistent with densities proposed by master plans.

The density category indicated on the applicable master plan has special status in a PD Zone. If the District Council desires to grant reclassification to a PD Zone with a density category *higher* than that indicated on the applicable master plan, such action requires the affirmative vote of at least six members of the District Council. Code §59-D-1.62. In this case, the Master Plan did not make a specific density recommendation for the subject property. However, the property is recommended for continued R-90 zoning, which allows a density of approximately 4.8 dwelling units per acre. The present application seeks a zoning classification that would permit up to 15 d.u./acre, with a binding element limiting the actual density to 8.8 d.u./acre. Both of these density figures are greater than the level indicated in the Master Plan, so approval of the present application will require the affirmative vote of at least six members of the District Council.

In the present case, both the Planning Board and Technical Staff found that the proposed development conforms to the recommendations of the *August 2000 Approved and Adopted North and West Silver Spring Master Plan*. The Applicant's land planners also provided extensive analysis reaching the same conclusion.

The Master Plan recommends the subject property for continued R-90 zoning, but anticipates that reclassification might be necessary to support redevelopment of the site. It recommends a minor master plan amendment if reclassification is needed, but at the same time, it contemplates the possibility that development will proceed without such an amendment. The Hearing Examiner is persuaded by Technical Staff and the Applicant's land planners that a minor master plan amendment is not needed before the requested reclassification may be given favorable consideration. There is no evidence of changed community conditions or a need to

clarify the Master Plan's recommendations, which are the two purposes the Master Plan identifies for a minor master plan amendment. Moreover, the present application has provided opportunities for public comment, which several civic groups have availed themselves of, and gives the District Council the opportunity to exercise its discretion and oversight as it would in a minor master plan amendment. Finally, it must be recognized that the additional time needed to process a minor master plan amendment could jeopardize the success of the redevelopment, in light of the rapidly deteriorating historic buildings.

The Master Plan provides six detailed guidelines to assist in evaluating any proposed redevelopment of the subject property, as set forth in Part IV.A.(a) above. The Hearing Examiner agrees with the Planning Board, Technical Staff and the Applicant's land planners that the proposed development amply satisfies each of these guidelines. Maintaining and restoring the historic district's integrity permeates virtually every aspect of the Development Plan, including the adaptive reuse of all the historic structures that are physically able to be saved; the extensive clean-up and revival of the outdoor environment, both natural and landscaped; and the architectural design of new construction in the historic district to complement existing historic structures. The importance of preserving historic integrity is underscored by the historic preservation easement that the County placed on the site before transferring title to the Applicant. This easement will require approval from the Maryland Historic Trust for all changes to historic buildings and the architectural design of new ones, providing very strong assurances that the redevelopment will respect the historic importance of the site.

The proposed development will limit impacts on environmentally sensitive areas by reusing existing structures and building footprints, and by concentrating new construction away from the stream buffer and forest stands. Moreover, a binding element requires imposition of a conservation easement to protect the Glen in perpetuity.

The Applicant proposes to make the ballroom available for public use, although the Pagoda and the Chapel are slated for use as private homes. The Master Plan guideline on this point is written in permissive language, suggesting that public access be considered “where compatible with the proposed use.” Master Plan at 42. On the Hearing Examiner’s reading, the decision to reserve the Pagoda and the Chapel for private use does not constitute failure to comply with this guideline.

The opinions of Technical Staff and the Applicant’s transportation planner constitute substantial, probative evidence that the proposed residential uses are consistent with the Master Plan recommendation for low-traffic-generating uses.

Finally, the residential character of the proposed development ensures that noise, light and other impacts on the surrounding area will be moderate. Moreover, the site abuts and confronts non-residential uses on three sides, decreasing dramatically the number of homes that could be affected.

Based on the preponderance of the evidence, the Hearing Examiner finds that the proposed development would be in substantial compliance not only with the use and density indicated by Master Plan, but with the Master Plan as a whole.

The evidence supports the conclusion that the Development Plan does not conflict with any other county plans or policies, or with the capital improvement program. It will further county housing policy by creating diverse housing options, including affordable housing, and will not be inconsistent with the AGP.

- (b) ***That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.***

1. Purposes of the Zone

The purpose clause for the PD Zone, found in Code §59-C-7.11, is set forth in full below, with relevant analysis and conclusions for each paragraph following.

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional District and the area master plans by permitting unified development consistent with densities proposed by master plans. It is intended that this zone provide a means of regulating development which can achieve flexibility of design, the integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than the procedures and regulations under which it is permitted as a right under conventional zoning categories. In so doing, it is intended that the zoning category be utilized to implement the general plan, area master plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.

It is further the purpose of this zone that development be so designed and constructed as to facilitate and encourage a maximum of social and community interaction and activity among those who live and work within an area and to encourage the creation of a distinctive visual character and identity for each development. It is intended that development in this zone produce a balance and coordinated mixture of residential and convenience commercial uses, as well as other commercial and industrial uses shown on the area master plan, and related public and private facilities.

It is furthermore the purpose of this zone to provide and encourage a broad range of housing types, comprising owner and rental occupancy units, and one-family, multiple-family and other structural types.

Additionally, it is the purpose of this zone to preserve and take the greatest possible aesthetic advantage of trees and, in order to do so, minimize the amount of grading necessary for construction of a development.

It is further the purpose of this zone to encourage and provide for open space not only for use as setbacks and yards surrounding structures and related walkways, but also conveniently located with respect to points of residential and commercial concentration so as to function for the general benefit of the community and public at large as places for relaxation, recreation and social activity; and, furthermore, open space should be so situated as part of the plan and design of each development as to achieve the physical and aesthetic integration of the uses and activities within each development.

It is also the purpose of this zone to encourage and provide for the development of comprehensive, pedestrian circulation networks, separated from vehicular roadways, which constitute a system of linkages among residential areas, open spaces, recreational areas, commercial

and employment areas and public facilities, and thereby minimize reliance upon the automobile as a means of transportation.

Since many of the purposes of the zone can best be realized with developments of a large scale in terms of area of land and numbers of dwelling units which offer opportunities for a wider range of related residential and nonresidential uses, it is therefore the purpose of this zone to encourage development on such a scale.

It is further the purpose of this zone to achieve a maximum of safety, convenience and amenity for both the residents of each development and the residents of neighboring areas, and, furthermore, to assure compatibility and coordination of each development with existing and proposed surrounding land uses.

This zone is in the nature of a special exception, and shall be approved or disapproved upon findings that the application is or is not proper for the comprehensive and systematic development of the county, is or is not capable of accomplishing the purposes of this zone and is or is not in substantial compliance with the duly approved and adopted general plan and master plans. In order to enable the council to evaluate the accomplishment of the purposes set forth herein, a special set of plans is required for each planned development, and the district council and the planning board are empowered to approve such plans if they find them to be capable of accomplishing the above purposes and in compliance with the requirements of this zone.

The Hearing Examiner agrees with the Planning Board, Technical Staff and the Applicant's land planners that the proposed development satisfies the purpose clause of the PD Zone.

1st paragraph: Master Plan implementation. As discussed under (a) above, the proposed development would be in substantial compliance with the applicable Master Plan. Moreover, testimony from several witnesses demonstrated that the proposed development would allow a higher degree of compliance with the Master Plan than development under the existing zoning. The Applicant presented the testimony of two land planners, plus a project manager with extensive experience in identifying appropriate zoning for the restoration of historic sites, all of whom opined that the flexibility of the PD Zone makes restoration of the site's historic integrity possible. For example, the main historic building exceeds the maximum height for the existing R-90 Zone, but is permitted under the PD-15 Zone. The PD Zone also permits a flexibility in site design that will facilitate adaptive reuse of existing structures and the design of new construction

to complement the historic buildings. Moreover, as stated by Technical Staff, “residential development is a reuse strategy that is mutually compatible with the existing neighborhood and the optimum land use given existing and proposed facilities.” Ex. 39 at 11.

Second paragraph: social and community interaction, distinctive visual character, balanced mix of uses. As Technical Staff and the Applicant’s land planners found, the proposed development will achieve these objectives in several ways. The development will unquestionably have a distinctive visual character because of the historic nature of the site and the eclectic architectural styles represented. The residential community will be defined by its relationship with the historic site. An extensive network of pedestrian sidewalks and trails will invite residents of the site and the surrounding area to enjoy the outdoor site amenities, as well as public use of the ballroom, all of which will facilitate social and community interaction. The proposed development does not include any non-residential land uses, but will have a mix of residential use types.

Third paragraph: broad range of housing types. The proposed development will provide a broad range of housing types, including historic condominiums and apartments, unique, historic single-family homes, and new townhouses. Housing options will appeal to diverse residents including young service workers looking for affordable rental units, first-time home buyers looking for condominium units or townhouses, and empty-nesters trying to downsize without the multi-level living of townhouses. The development will broaden the mix of housing types in the surrounding area, which contains primarily single-family dwellings and institutional uses.

Fourth paragraph: trees and grading. The proposed development will minimize grading by reusing existing structures and building footprints to the maximum extent possible. A binding element requires a conservation easement to be placed on the Glen, which will protect the stream valley and most of the forest on site in perpetuity. Approximately nine of the 13 acres

of forest currently existing on the site will be preserved, substantially exceeding the county forest conservation requirements.

Fifth paragraph: open space. The Development Plan makes use of open space in a variety of ways. These include public open spaces that will be conveniently located for residents of both the subject property and the surrounding area. The interpretive trail and improvements to the trail system in the Glen will provide better access to the historic district and the Glen itself than is currently available. Open space will also include private and semi-private outdoor spaces for residents. Improvements to the trail head in the southwest corner of the site will allow better access for all area residents to the adjacent MNCPPC park land.

Sixth paragraph: pedestrian networks. Pedestrian activity will be encouraged by an extensive network of pedestrian sidewalks and trails that will link the various areas of the subject property with one another and the surrounding area, and by the streetscape design for the new neighborhood south of Linden Lane, with its emphasis on front porches and rear vehicular access.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. The Development Plan provides for up to 280 dwelling units on 32 acres, consistent with the size contemplated for the zone.

Eighth paragraph, first part: safety, convenience and amenity. The Applicant presented extensive evidence that the proposed development will provide a safe and convenient residential community, with improved vehicular and pedestrian safety and convenience for the surrounding area as a whole. Improvements to Linden Lane will create a safer roadway, and may decrease high-speed and cut-through traffic. Sidewalks along the site's main Linden Lane frontage, and extending into the site where historic structures are very close to the road, will provide easier pedestrian access to the Metro. In addition, rehabilitation of the historic structures will remove currently unsafe conditions caused by the rapidly deteriorating buildings.

The proposed development will provide significant amenities for residents of the site and the surrounding area by making the historic district, the Glen and the ballroom more accessible to the public. Substantial open space, both natural and landscaped, as well as the restoration of historic statuary, will provide additional amenities for residents and visitors to the site. Moreover, the opportunity to live in a refurbished historic building will itself be a significant benefit for new residents who choose that option.

Eighth paragraph, second part: compatibility. The evidence demonstrates overwhelmingly that the proposed reclassification and development will be compatible with the surrounding area. Implementation of the Development Plan will permit the restoration and reuse of a site that has long lain dormant, and has become increasingly unsafe. Technical Staff summarized the necessary compatibility finding elegantly by stating that the goals and objectives set forth for the property in the Master Plan can be seen as compatibility guidelines. The Hearing Examiner is persuaded by Technical Staff's opinion that compliance with the Master Plan's very specific guidelines for the subject property demonstrates compatibility with surrounding land uses. Moreover, as the Applicant's land planners stated, the housing types and densities proposed, their setbacks, their scale and massing, plus the connectivity and character of the development, make it very compatible with the surrounding area.

It should also be noted that the subject property abuts or confronts the Beltway and institutional uses on three sides. The only residential uses on the subject property that directly confront other residential uses will be single-family detached homes facing other single-family detached homes. The architectural styles will not necessarily be similar, because some of the existing historic structures that will be converted for use as single-family homes have an international or cultural flavor unlike the housing styles in the surrounding area. These historic buildings pre-date the rest of the neighborhood, however, and are part of its architectural fabric.

Finally, the Hearing Examiner agrees with Technical Staff that the proposed Land Use Plan shows internal compatibility. The Applicant has presented a balanced, harmonious

plan for the reuse of a complicated site that shows sensitivity to historic and natural resources, and will create a residential community with a mix of housing types unified by careful site design, a high degree of vehicular and pedestrian connectivity, and extensive landscape features.

Ninth paragraph: three findings. The purpose clause states that the PD Zone “is in the nature of a special exception,” and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone; and
- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

On the Hearing Examiner’s reading, this element of the purpose clause does not add new requirements, but reminds the District Council of its responsibility to carefully consider whether the PD Zone would be appropriate in the location for which it is requested. The conclusions drawn earlier in this section govern the findings to be made here. Based on the preponderance of the evidence and for the reasons stated above, the Hearing Examiner concludes that present application is proper for the comprehensive and systematic development of the County, in compliance with and capable of accomplishing the purposes of the zone, and in substantial compliance with the General Plan and Master Plan.

2. Standards and Regulations of the Zone

The standards and regulations of the PD-15 Zone are summarized below, together with the grounds for the Hearing Examiner’s conclusion that the proposed development would satisfy each of these requirements.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, “no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher.” The subject property is recommended in the Master Plan

(and classified under) the R-90 Zone, which provides for development at a density greater than two dwelling units per acre.

Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. The subject application satisfies the first of these criteria, which requires that the land contain sufficient gross area to construct 50 or more dwelling units under the density category to be granted. That standard clearly is met here, where the Land Use Plan provides for up to 280 units. The application also satisfies the third of these criteria, which provides that the PD Zone may be applied where it would result in the preservation of a historic structure or site. As noted earlier, historic preservation lies at the core of the proposed development.

Section 59-C-7.131, Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. As set forth in Part II.I. above, the preliminary unit mix fits well within these parameters, demonstrating that the Applicant will have no difficulty complying with this requirement. Moreover, Technical Staff opined and the Hearing Examiner agrees that the transitional housing use fits the Montgomery County definition of a group home, which is a permitted residential use in the PD Zone.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted but not required under the PD Zone. Parameters established for commercial uses are not applicable to the subject application, which is limited to residential uses.

Section 59-C-7.133, Other Uses. Noncommercial community recreational facilities for the use of residents, such as the common open space and community recreation areas shown on the Development Plan (*see esp.* Proposed Recreation Program, Ex. 57) are permitted in the PD Zone.

Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§ 59-C-7.14(b)):

The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, the capital improvements program, the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

By binding element, the present application limits itself to approximately 8.8 dwelling units per acre, far below the 15 units per acre permitted in the PD-15 Zone. The density category requested is appropriate because it is necessary to make the main historic building, which in part exceeds four stories, a permitted use. Moreover, as discussed in Part IV.A. above, the proposed development fully complies with the purposes of the PD zone and with the Master Plan, and will provide a guaranteed minimum of 20 percent affordable units. The evidence indicates strongly that application of the PD Zone at this location is necessary to allow the preservation and adaptive reuse of this important historic site to go forward. For all of these reasons, the Hearing Examiner concludes that the density category requested is appropriate.

Section 59-C-7.15, Compatibility. As discussed in Part V.A. above, the Hearing Examiner finds that the proposed development will be compatible with existing development in the surrounding area. The application does not, however satisfy specific setback and building height provisions that are designed to ensure compatibility. Section 59-C-7.15 of the Zoning Ordinance states that where land classified under the PD Zone adjoins land for which the area master plan recommends a one-family detached zone, no building other than a one-family detached residence may be constructed within 100 feet of such adjoining land, and no building may be constructed at a height greater than its distance from such adjoining land.

The Zoning Ordinance authorizes the Planning Board to waive the setback and building height standards of the PD Zone, at site plan, where necessary to facilitate the redevelopment of a designated historic district, provided that the adjoining property will not be adversely affected and that building heights do not exceed 50 feet. The Planning Board's recommendation in this matter indicated support for the requested waivers. See Ex. 40. The Applicant has requested that if the District Council votes to approve the requested rezoning, its

approval include a recommendation that the Planning Board granted the requested setback and building height waiver.

Roughly 50 units, comprising about half of the proposed new units south of Linden Lane and a fair number of units in the historic district, are planned for locations and heights that would violate the setback and height restrictions. Testimony established that denial of the waiver would have a tremendous impact on the project, and could prevent it from going forward. Moreover, virtually all of the affected buildings abut land that is recommended and zoned for residential use, but is used as park land or part of the Walter Reed annex. Only a handful of units that violate the setback and height standards will be in close proximity to single-family homes, and the homes they are close to are part of the proposed development.

Under these circumstances, the Hearing Examiner is in agreement with Technical Staff that the requested waivers will facilitate the redevelopment of the historic district, without material adverse effects on adjoining property, and therefore the waivers are appropriate.

Section 59-C-7.16, Green Area. The PD-15 Zone requires a minimum of 50 percent green area. The proposed Land Use Plan provides for green space approaching 60 percent of the site, in excess of the statutory requirement. This was not established as a binding element, to preserve flexibility during site plan review, but the evidence easily establishes that the 50 percent requirement can be met.

Section 59-C-7.17, Dedication of Land for Public Use. The Master Plan does not require any dedications in connection with redevelopment of the subject property. Nonetheless, the Applicant has agreed to dedicate land needed to widen and improve Linden Lane.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. The Land Use Plan currently shows 535 parking spaces, about 30 spaces more than the Zoning Ordinance requires for the preliminary unit mix. The final parking requirement will depend on the final unit mix, and the Applicant will provide at least the minimum required.

The final two elements of finding (b), the maximum safety, convenience and amenity of the residents, and compatibility, have already been addressed.

- (c) ***That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.***

The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient. The internal circulation system will provide extensive vehicular and pedestrian access and connectivity, and proposed improvements to Linden Lane will increase vehicular and pedestrian safety. In addition, improved sidewalks and trails will provide better access, for residents of the site and the surrounding area, to the Metro, the Glen and other areas of the historic district, and adjacent park land.

- (d) ***That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.***

The proposed development would tend to prevent erosion of the soil and preserve natural vegetation and other natural features of the site by reusing existing buildings and both existing and former building footprints. New construction will accommodate existing topography by using English basements in some units and construction on slab for others, as appropriate. The principal natural features of the site will be preserved by a conservation easement over the historic Glen (required by binding element) and by on-site compliance with forest conservation requirements. The Applicant has submitted a storm water concept plan and will adhere to applicable County standards.

- (e) ***That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other***

common or quasi-public purposes are adequate and sufficient.

The Applicant has provided a summary of the planned homeowners' association structure indicating that a single homeowners' association covering the entire development will be responsible for perpetual maintenance of common and quasi-public areas. See Ex. 50.

B. Public Interest

The applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [*Regional District Act*, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities. As discussed in Part IV.A. above, the Hearing Examiner agrees with the findings of the Planning Board and Technical Staff that the subject application is consistent with the applicable Master Plan.

The evidence of record indicates that the increase in traffic volume associated with the proposed development will not lead to unacceptable levels of congestion. Moreover, considering the proposed roadway improvements, the evidence supports a conclusion that the proposed development will, on balance, have a beneficial impact on local roadway conditions.

MCPS estimates suggest a potential for the proposed development to worsen crowded conditions at the local elementary school. However, in light of the AGP finding that school capacity in all clusters is adequate to support additional residential development, plus evidence that the unit types proposed in this case may attract fewer school-age children than MCPS estimates, and the strong evidence that the proposed development will serve the larger public interest, the

Hearing Examiner considers the evidence of potential adverse effects on school overcrowding to be insufficient to support a denial in this case.

The evidence overwhelmingly supports a conclusion that the proposed development will serve the public interest. The importance of the subject property as a historic site is recognized at the national and county levels. The County has had extensive involvement, over the course of many years, in finding a way to preserve and restore this historic district as a national treasure. The Applicants have succeeded in designing a plan that will achieve that goal while bringing the neighborhood infrastructure improvements and a compatible residential community. The project will also further county housing policies by providing a variety of housing types, including a substantial amount of affordable housing. The Applicant presented numerous expert witnesses who echoed Technical Staff's conclusion that the proposed reclassification and development would be in the public interest. Taken together, these professional opinions represent persuasive evidence that the public interest will be served by granting the present application.

V. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, I reach the conclusions specified below.

A. Development Plan

1. The requested reclassification to the PD-15 Zone is in substantial compliance with the use and density recommended by the Master Plan, and does not conflict with any other county plan or with the capital improvements program.
2. The Development Plan complies with the purposes, standards, and regulations of the PD-15 Zone, provides for the maximum safety, convenience, and amenity of the residents of the development and provides for a form of development that will be compatible with adjacent development.
3. The Development Plan proposes internal vehicular and pedestrian circulation systems and points of external access that will be safe, adequate and efficient.

4. By its design, by minimizing grading and by other means including a conservation easement, the proposed development will tend to prevent erosion of the soil and preserve natural vegetation and other natural features of the site. The application will comply with forest conservation requirements under Chapter 22A and requirements for water resource protection under Chapter 19.

5. The development plan is supported by documents that adequately and sufficiently show the ownership and method of perpetual maintenance of areas intended to be used for recreational or other common or quasi-public purposes.

B. Zoning Request

Application of the PD-15 Zone at the proposed location is proper for the comprehensive and systematic development of the County because the proposed development:

1. Will serve the public interest;
2. Will be in substantial compliance with the applicable master plan; and
3. Will satisfy the purposes, standards and regulations of the zone.

VI. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-828, requesting reclassification from the R-90 Zone to the PD-15 Zone of 31.78821 acres of land in the 13th Election District, be **approved** in the amount requested and subject to the specifications and requirements of the final Land Use Plan, Ex. 68(a); provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Land Use Plan approved by the District Council within 10 days of approval, in accordance with § 59-D-1.64 of the Zoning Ordinance.

Dated: March 3, 2005

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner